

Calendar No. 625

104TH CONGRESS }
2d Session }

SENATE

{ REPORT
104-371 }

VETERANS' BENEFITS IMPROVEMENTS
ACT OF 1996

REPORT

OF THE

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 1711



SEPTEMBER 24 (legislative day, SEPTEMBER 20), 1996.—Ordered to be
printed

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VETERANS' BENEFITS IMPROVEMENTS ACT OF 1996

SEPTEMBER 24 (legislative day, SEPTEMBER 20), 1996—Ordered to be printed

Mr. SIMPSON, from the Committee on Veterans' Affairs,
submitted the following

REPORT

[To accompany S. 1711]

The Committee on Veterans' Affairs, to which was referred the bill (S. 1711) to establish a Commission to evaluate the programs of the Federal Government that assist members of the Armed Forces and veterans in readjusting to civilian life, and for other purposes, having considered the same, reports favorably thereon with an amendment in the form of a substitute and an amendment to the title, and recommends that the bill as amended do pass.

COMMITTEE AMENDMENTS

The amendments are as follows:

Strike out all after the enacting clause as follows and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Veterans’ Benefits Improvements Act of 1996”.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. References to title 38, United States Code.

TITLE I—COMMISSION ON TRANSITION ASSISTANCE

Sec. 101. Establishment of commission.

Sec. 102. Duties of commission.

Sec. 103. Powers of commission.

Sec. 104. Miscellaneous administrative provisions.

Sec. 105. Commission personnel matters.

Sec. 106. Termination of commission.

Sec. 107. Definitions.

Sec. 108. Funding.

TITLE II—LIFE INSURANCE PROGRAMS

Sec. 201. Short title.

Sec. 202. Removal of gender references with respect to Servicemen’s Group Life Insurance.

- Sec. 203. Conversion of retired reservist Servicemembers' Group Life Insurance to Veterans' Group Life Insurance and extension of Veterans' Group Life Insurance to members of the Ready Reserves.
 Sec. 204. Conversion of SGLI and VGLI to commercial life insurance.
 Sec. 205. Technical amendment.

TITLE III—BENEFITS PROVISIONS

- Sec. 301. Expansion of period of Vietnam era for certain veterans.
 Sec. 302. Revision of authority relating to centers for minority veterans and women veterans.
 Sec. 303. Outer burial receptacles.
 Sec. 304. Clarification of eligibility of minors for burial in national cemeteries.
 Sec. 305. Extension of authority to treat alternative teacher certification programs as educational institutions for certain educational assistance purposes.
 Sec. 306. Direct loans to refinance loans under Native American Veteran Housing Loan Pilot Program.
 Sec. 307. Clothing allowance for incarcerated veterans.
 Sec. 308. Appointment of veterans service organizations as claimants' representatives.
 Sec. 309. Provision of copies of Board of Veterans' Appeals decisions.
 Sec. 310. Extension of certain authorities for services for homeless veterans.

TITLE IV—EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES

- Sec. 401. Purposes.
 Sec. 402. Definitions.
 Sec. 403. Discrimination against persons who serve in the uniformed services and acts of reprisal prohibited.
 Sec. 404. Reemployment rights of persons who serve in the uniformed services.
 Sec. 405. Reemployment positions.
 Sec. 406. Leave.
 Sec. 407. Health plans.
 Sec. 408. Employee pension benefit plans.
 Sec. 409. Enforcement of employment or reemployment rights.
 Sec. 410. Enforcement of rights with respect to a State or private employer.
 Sec. 411. Enforcement of rights with respect to Federal executive agencies.
 Sec. 412. Enforcement of rights with respect to certain Federal agencies.
 Sec. 413. Conduct of investigation; subpoenas.
 Sec. 414. Transition rules and effective dates.
 Sec. 415. Effective dates.

SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—COMMISSION ON TRANSITION ASSISTANCE

SEC. 101. ESTABLISHMENT OF COMMISSION.

(a) ESTABLISHMENT.—There is established a commission to be known as the Commission on Service Members and Veterans Transition Assistance (hereafter in this title referred to as the "Commission").

(b) MEMBERSHIP.—(1) The Commission shall be composed of 12 members appointed from among private United States citizens with appropriate and diverse experiences, expertise, and historical perspectives on veterans, military, organizational, and management matters, of whom—

(A) four shall be appointed by the Chairman of the Committee on Veterans' Affairs of the Senate, in consultation with the Ranking Member of that committee;

(B) four shall be appointed by the Chairman of the Committee on Veterans' Affairs of the House of Representatives, in consultation with the Ranking Member of that committee;

(C) two shall be appointed by the Chairman of the Committee on Armed Services of the Senate, in consultation with the Ranking Member of that committee; and

(D) two shall be appointed by the Chairman of the Committee on National Security of the House of Representatives, in consultation with the Ranking Member of that committee.

(2)(A) One member of the Commission appointed under each of subparagraphs (A) and (B) of paragraph (1) shall be a representative of a veterans service organization.

(B) To the maximum extent practicable, the individuals appointed as members of the Commission shall be veterans.

(C) Not more than seven of the members of the Commission may be members of the same political party.

(3) The appointments of members of the Commission shall, to the maximum extent practicable, be made after consultation with representatives of veterans service organizations.

(4) The appointments of the members of the Commission shall be made not later than 45 days after the date of enactment of this Act.

(c) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(d) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(e) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(f) CHAIRMAN AND VICE CHAIRMAN.—The Commission shall select a Chairman and Vice Chairman from among its members.

(g) MEETINGS.—The Commission shall meet at the call of the Chairman of the Commission.

(h) PANELS.—The Commission may establish panels composed of less than the full membership of the Commission for the purpose of carrying out the Commission's duties. The actions of such panels shall be subject to the review and control of the Commission. Any findings and determinations made by such a panel shall not be considered the findings and determinations of the Commission unless approved by the Commission.

(i) AUTHORITY OF INDIVIDUALS TO ACT FOR COMMISSION.—Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take under this title.

SEC. 102. DUTIES OF COMMISSION.

(a) IN GENERAL.—The Commission shall—

(1) review the efficacy and appropriateness of veterans transition and assistance programs in providing assistance to members of the Armed Forces in making the transition and adjustment to civilian life upon their separation from the Armed Forces and in providing assistance to veterans in making the transition to, and adjusting to, civilian life;

(2) review the allocation under law of responsibility for the administration of veterans transition and assistance programs among the various departments and agencies of the Federal Government and determine the feasibility and desirability of consolidating such administration in one such department or agency;

(3) evaluate proposals for improving such programs, including proposals to consolidate, streamline, and enhance the provision of such assistance and proposals for alternative means of providing such assistance; and

(4) make recommendations to Congress regarding means of ensuring the continuing utility of such programs and assistance and of otherwise improving such programs and the provision of such assistance.

(b) REVIEW OF PROGRAMS TO ASSIST MEMBERS OF THE ARMED FORCES AT SEPARATION.—(1) While carrying out the general duties specified in subsection (a), the members of the Commission appointed under subparagraphs (C) and (D) of section 101(b)(1) shall review primarily the programs intended to assist members of the Armed Forces at the time of their separation from service in the Armed Forces, including programs designed to assist families of such members in preparing for the transition of such members from military life to civilian life and to facilitate that transition.

(2) In carrying out the review, such members of the Commission shall determine—

(A) the adequacy of the programs referred to in paragraph (1) for their purposes;

(B) the adequacy of the support of the Armed Forces for such programs;

(C) the effect, if any, of the existence of such programs on military readiness;

(D) the extent to which such programs provide members of the Armed Forces with job-search skills;

(E) the extent to which such programs prepare such members for employment in the private sector and in the public sector;

(F) the effectiveness of such programs in assisting such members in finding employment in the public sector upon their separation from service; and

(G) the ways in which such programs could be improved in order to assist such members in securing meaningful employment in the private sector upon their separation from service.

(c) REVIEW OF PROGRAMS TO ASSIST VETERANS.—(1) While carrying out the general duties specified in subsection (a), the members of the Commission appointed under subparagraphs (A) and (B) of section 101(b)(1) shall—

(A) review the adequacy of programs intended to assist veterans (including disabled veterans, homeless veterans, and economically disadvantaged veterans) in adjusting to civilian life, including the programs referred to in paragraph (2); and

(B) consider—

(i) whether the scope, focus, or content of such programs should be changed as a result of the conversion of the Armed Forces to an all-volunteer force; and

(ii) whether responsibility for administration of such programs should be transferred to a department or agency other than the Department of Veterans Affairs as a result of such conversion and, if so, the department or agency to which the administration should be transferred.

(2) The programs referred to in paragraph (1)(A) are the following:

(A) Educational assistance programs.

(B) Job counseling, job training, and job placement services programs.

(C) Rehabilitation and training programs.

(D) Housing loan programs.

(E) Small business loan and small business assistance programs.

(F) Employment and employment training programs for employment in the public sector and the private sector, including employer training programs and union apprenticeship programs.

(G) Federal Government personnel policies (including veterans' preference policies) and the enforcement of such policies.

(H) Programs that prepare the families of members of the Armed Forces for their transition from military life to civilian life and facilitate that transition.

(d) REPORTS.—(1) Not later than 90 days after the date on which all members of the Commission have been appointed, the Commission shall submit to the Committees on Veterans' Affairs and Armed Services of the Senate and the Committees on Veterans' Affairs and National Security of the House of Representatives a report setting forth a plan for the work of the Commission. The Commission shall develop the plan in consultation with the Secretary of Defense, the Secretary of Veterans Affairs, and the heads of other appropriate departments and agencies of the Federal Government.

(2)(A) Not later than one year after the date of the first meeting of the Commission, the Commission shall submit to the committees referred to in paragraph (1), and to the Secretary of Defense, the Secretary of Veterans Affairs, the Secretary of Labor, and the Secretary of Education, a report setting forth the activities, findings, and recommendations of the Commission, including any recommendations for legislative action and administrative action as the Commission considers appropriate.

(B) Not later than 90 days after receiving the report referred to in subparagraph (A), the Secretary of Defense and the Secretary of Veterans Affairs shall jointly transmit the report to Congress, together with the Secretaries' comments on the report.

SEC. 103. POWERS OF COMMISSION.

(a) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the purposes of this title.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from the Department of Defense, the Department of Veterans Affairs, and any other department or agency of the Federal Government such information as the Commission considers necessary to carry out its duties under this title. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information expeditiously to the Commission.

SEC. 104. MISCELLANEOUS ADMINISTRATIVE PROVISIONS.

(a) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(b) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(c) MISCELLANEOUS ADMINISTRATIVE SUPPORT.—The Secretary of Defense and the Secretary of Veterans Affairs shall, upon the request of the Chairman of the Commission, furnish the Commission, on a reimbursable basis, any administrative and support services as the Commission may require.

SEC. 105. COMMISSION PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—Each member of the Commission shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay pre-

scribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in performing the duties of the Commission.

(b) TRAVEL AND TRAVEL EXPENSES.—(1) Members and personnel of the Commission may travel on military aircraft, military vehicles, or other military conveyances when travel is necessary in the performance of a duty of the Commission except when the cost of commercial transportation is less expensive.

(2) The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) STAFF.—(1) The Chairman of the Commission may, without regard to civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. In appointing an individual as executive director, the Chairman shall, to the maximum extent practicable, attempt to appoint an individual who is a veteran. The employment of an executive director shall be subject to confirmation by the Commission.

(2) The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Upon request of the Chairman of the Commission, the head of any department or agency of the Federal Government may detail, on a nonreimbursable basis, any personnel of the department or agency to the Commission to assist the Commission in carrying out its duties.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5316 of such title.

SEC. 106. TERMINATION OF COMMISSION.

The Commission shall terminate 90 days after the date on which the Commission submits its report under section 102(d)(2).

SEC. 107. DEFINITIONS.

For the purposes of this title—

(1) The term “veterans transition and assistance program” means any program of the Federal Government, including the Department of Defense, the Department of Veterans Affairs, the Department of Labor, and the Department of Education, the purpose of which is—

(A) to assist, by rehabilitation or other means, members of the Armed Forces in readjusting or otherwise making the transition to civilian life upon their separation from service in the Armed Forces; or

(B) to assist veterans in making the transition to civilian life.

(2) The term “Armed Forces” has the meaning given such term in section 101(10) of title 38, United States Code.

(3) The term “veteran” has the meaning given such term in section 101(2) of title 38, United States Code.

(4) The term “veterans service organization” means any organization covered by section 5902(a) of title 38, United States Code.

SEC. 108. FUNDING.

(a) IN GENERAL.—The Secretary of Defense shall, upon the request of the Chairman of the Commission, make available to the Commission such amounts as the Commission may require to carry out its duties under this title. The Secretary shall make such amounts available from amounts appropriated for the Department of Defense.

(b) AVAILABILITY.—Any sums made available to the Commission under subsection (a) shall remain available, without fiscal year limitation, until the termination of the Commission.

TITLE II—LIFE INSURANCE PROGRAMS

SEC. 201. SHORT TITLE.

This title may be cited as the “Veterans’ Insurance Reform Act of 1996”.

SEC. 202. REMOVAL OF GENDER REFERENCES WITH RESPECT TO SERVICEMEN’S GROUP LIFE INSURANCE.

(a) IN GENERAL.—The following provisions are amended by striking out “Service-
men’s Group Life Insurance” each place it appears and inserting in lieu thereof
“Servicemembers’ Group Life Insurance”:

- (1) Subsections (a), (c), and (e) of section 1967.
- (2) Subsections (a) through (d) of section 1969.
- (3) Subsections (a), (f), and (g) of section 1970.
- (4) Section 1971(b).
- (5) Section 1973.
- (6) The text of section 1974(a).
- (7) Subsections (a) (other than the third and fourth sentences), (d), and (g)
of section 1977.
- (8) Section 3017(a)(2)(A)(i).
- (9) Section 3224(1).

(b) CONFORMING AND CLERICAL AMENDMENTS.—(1) Section 1315(f)(1)(F) is amend-
ed by striking out “servicemen’s group life insurance” and inserting in lieu thereof
“servicemembers’ group life insurance”.

(2)(A) The heading of subchapter III of chapter 19 is amended to read as follows:

“SUBCHAPTER III—SERVICEMEMBERS’ GROUP LIFE INSURANCE”.

(B) The item relating to such subchapter in the table of sections at the beginning
of such chapter is amended to read as follows:

“Subchapter III—Servicemembers’ Group Life Insurance”.

(3)(A) The section head of section 1974 is amended to read as follows:

“§ 1974. Advisory Council on Servicemembers’ Group Life Insurance”.

(B) The item relating to such section in the table of sections at the beginning of
chapter 19 is amended to read as follows:

“1974. Advisory Council on Servicemembers’ Group Life Insurance.”.

(d) REFERENCES.—(1) Any reference to Servicemen’s Group Life Insurance in any
Federal law, Executive order, regulation, delegation of authority, or other document
of the Federal Government shall be deemed to refer to Servicemembers’ Group Life
Insurance.

(2) Any reference to the Advisory Council on Servicemen’s Group Life Insurance
in any Federal law, Executive order, regulation, delegation of authority, or other
document of the Federal Government shall be deemed to refer to the Advisory Coun-
cil on Servicemembers’ Group Life Insurance.

SEC. 203. CONVERSION OF RETIRED RESERVIST SERVICEMEMBERS’ GROUP LIFE INSURANCE TO VETERANS’ GROUP LIFE INSURANCE AND EXTENSION OF VETERANS’ GROUP LIFE INSURANCE TO MEMBERS OF THE READY RESERVES.

(a) DEFINITIONS.—Section 1965(5) is amended—

- (1) by adding “and” at the end of subparagraph (B);
- (2) by striking out subparagraphs (C) and (D); and
- (3) by redesignating subparagraph (E) as subparagraph (C).

(b) PERSONS INSURED.—Section 1967 is amended—

- (1) in subsection (a)—
 - (A) by adding “and” at the end of paragraph (1);
 - (B) by striking out paragraphs (3) and (4); and
 - (C) in the full sentence in the matter following paragraph (2), by striking
out “or the first day a member of the Reserves, whether or not assigned
to the Retired Reserve of a uniformed service, meets the qualifications of
section 1965(5)(C) of this title, or the first day a member of the Reserves
meets the qualifications of section 1965(5)(D) of this title,”;
- (2) by striking out subsection (d); and
- (3) by redesignating subsection (e) as subsection (d).

(c) DURATION AND TERMINATION OF COVERAGE.—Section 1968(a) is amended—

(1) by striking out “subparagraph (B), (C), or (D) of section 1965(5)” in the matter preceding paragraph (1) and inserting in lieu thereof “section 1965(5)(B)”;

(2) by striking out paragraph (4) and inserting in lieu thereof the following new paragraph (4):

“(4) with respect to a member of the Ready Reserve of a uniformed service who meets the qualifications set forth in section 1965(5)(B) of this title, one hundred and twenty days after separation or release from such assignment, unless on the date of such separation or release the member is totally disabled, under criteria established by the Secretary, in which event the insurance shall cease one year after the date of separation or release from such assignment, or on the date the insured ceases to be totally disabled, whichever is the earlier date, but in no event prior to the expiration of one hundred and twenty days after separation or release from such assignment.”; and

(3) by striking out paragraphs (5) and (6).

(d) DEDUCTIONS.—Section 1969 is amended—

(1) in subsection (a)(2), by striking out “is assigned to the Reserve (other than the Retired Reserve)” and all that follows through “section 1965(5)(D) of this title.”;

(2) by striking out subsection (e); and

(3) by redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

(e) CONVERSION OF SGLI TO VGLI.—The Servicemembers’ Group Life Insurance of any member of the Retired Reserve of a uniformed service shall be converted to Veterans’ Group Life Insurance effective 90 days after the date of enactment of this Act.

SEC. 204. CONVERSION OF SGLI AND VGLI TO COMMERCIAL LIFE INSURANCE.

(a) OPTION TO CONVERT SGLI.—Subsection (b) of section 1968 is amended to read as follows:

“(b)(1) Each policy purchased under this subchapter shall contain a provision, in terms approved by the Secretary, that, except as hereinafter provided, Servicemembers’ Group Life Insurance which is continued in force after expiration of the period of duty or travel under section 1967(b) or 1968(a) of this title, effective the day after the date such insurance would cease, shall, at the election of the member or former member concerned—

“(A) be automatically converted to Veterans’ Group Life Insurance subject to (i) the timely payment of the initial premium under terms prescribed by the Secretary, and (ii) the terms and conditions set forth in section 1977 of this title; or

“(B) be converted to an individual policy of insurance as described in section 1977(e) of this title upon written application for conversion made to the participating company selected by the member and payment of the required premiums.

“(2) Automatic conversion under paragraph (1)(A) shall be effective only in the case of an otherwise eligible member or former member who is separated or released from a period of active duty or active duty for training or inactive duty training on or after the date on which the Veterans’ Group Life Insurance program (provided for under section 1977 of this title) becomes effective.”.

(b) CONVERSION OF VGLI.—Section 1977 is amended—

(1) in subsection (a), by striking out the fourth and fifth sentences and inserting in lieu thereof the following sentence: “If any person insured under Veterans’ Group Life Insurance again becomes insured under Servicemembers’ Group Life Insurance but dies before terminating or converting such person’s Veterans’ Group Life Insurance to Servicemembers’ Group Life Insurance, Veterans’ Group Life Insurance will be payable only if such person is insured for less than \$200,000 under Servicemembers’ Group Life Insurance, and then only in an amount which when added to the amount of Servicemembers’ Group Life Insurance payable shall not exceed \$200,000.”; and

(2) in subsection (e), by striking out the third sentence and inserting in lieu thereof the following new sentence: “A Veterans’ Group Life Insurance policy converted to an individual policy under this subsection shall terminate on the date before the date on which the individual policy becomes effective.”.

SEC. 205. TECHNICAL AMENDMENT.

Section 1977(a) is amended by striking out “and (e)” each place it appears in the first and second sentences.

TITLE III—BENEFITS PROVISIONS

SEC. 301. EXPANSION OF PERIOD OF VIETNAM ERA FOR CERTAIN VETERANS.

(a) IN GENERAL.—Section 101(29) of title 38, United States Code, is amended to read as follows:

“(29) The term Vietnam era means the following:

“(A) The period beginning on February 28, 1961, and ending on May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during such period.

“(B) The period beginning on August 5, 1964, and ending on May 7, 1975, in all other cases.”.

(b) LIMITED EXPANSION FOR SPECIFIC PURPOSES.—(1)(A) Paragraphs (1)(B) and (3) of section 1116(a) of such title are each amended by striking out “during the Vietnam era” and inserting in lieu thereof “during the period beginning on January 9, 1962, and ending on May 7, 1975,”.

(B) Paragraphs (1)(A), (2)(C), (2)(E), (2)(F), and (4) of such section are each amended by striking out “during the Vietnam era” and inserting in lieu thereof “during the period beginning on January 9, 1962, and ending on May 7, 1975”.

(2) Section 1710(e)(1)(A) of such title is amended—

(A) in clause (i), by striking out “during the Vietnam era,” and inserting in lieu thereof “during the period beginning on January 9, 1962, and ending on May 7, 1975,”; and

(B) in clause (ii), by striking out “such era” and inserting in lieu thereof “such period”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1997. No benefit may be paid or provided by reason of such amendments for any period before such date.

SEC. 302. REVISION OF AUTHORITY RELATING TO CENTERS FOR MINORITY VETERANS AND WOMEN VETERANS.

(a) SES STATUS OF DIRECTORS.—Sections 317(b) and 318(b) are each amended by inserting “career or” before “noncareer”.

(b) ADDITIONAL FUNCTIONS OF CENTER FOR MINORITY VETERANS.—Section 317(d) is amended—

(1) by redesignating paragraph (10) as paragraph (12); and

(2) by inserting after paragraph (9) the following new paragraphs (10) and (11):

“(10) Advise the Secretary and other appropriate officials on the effectiveness of the Department’s efforts to accomplish the goals of section 492B of the Public Health Service Act (42 U.S.C. 289a–2) with respect to the inclusion of minorities in clinical research and on particular health conditions affecting the health of members of minority groups which should be studied as part of the Department’s medical research program and promote cooperation between the Department and other sponsors of medical research of potential benefit to veterans who are minorities.

“(11) Provide support and administrative services to the Advisory Committee on Minority Veterans provided for under section 544 of this title.”.

(c) DEFINITION OF MINORITY VETERANS.—Section 317 is amended by adding at the end the following:

“(g) In this section—

“(1) The term “veterans who are minorities” means veterans who are minority group members.

“(2) The term “minority group member” has the meaning given such term in section 544(d) of this title.”.

(d) CLARIFICATION OF FUNCTIONS OF CENTER FOR WOMEN VETERANS.—Section 318(d)(10) is amended by striking out “(relating to)” and all that follows through “and of” and inserting in lieu thereof “(42 U.S.C. 289a–2) with respect to the inclusion of women in clinical research and on”.

(e) ADDITIONAL FUNCTIONS OF ADVISORY COMMITTEES.—(1) Section 542(b) is amended by inserting “, including the Center for Women Veterans” before the period at the end.

(2) Section 544(b) is amended by inserting “, including the Center for Minority Veterans” before the period at the end.

(f) TERMINATION DATE OF ADVISORY COMMITTEE ON MINORITY VETERANS.—Section 544(e) is amended by striking out “December 31, 1997” and inserting in lieu thereof “December 31, 1999”.

SEC. 303. OUTER BURIAL RECEPTACLES.

(a) IN GENERAL.—Subsection (d) of section 2306 is amended—

(1) in paragraph (1), by striking out “a grave liner” each place it appears and inserting in lieu thereof “an outer burial receptacle”;

(2) in paragraph (2)—

(A) by striking out “grave liners” and inserting in lieu thereof “outer burial receptacles”; and

(B) by striking out “specifications and procedures” and inserting in lieu thereof “regulations or procedures”; and

(3) by adding at the end the following:

“(3) Regulations or procedures under paragraph (2) may specify that—

“(A) an outer burial receptacle other than a grave liner be provided in lieu of a grave liner at the election of the survivors of the interred veteran; and

“(B) if an outer burial receptacle other than a grave liner is provided in lieu of a grave liner upon an election of such survivors, such survivors be required—

“(i) to pay the amount by which the cost of the outer burial receptacle exceeds the cost of the grave liner that would otherwise have been provided in the absence of the election; and

“(ii) to pay the amount of the administrative costs incurred by the Secretary concerned in providing the outer burial receptacle in lieu of such grave liner.

“(4) Regulations or procedures under paragraph (2) may provide for the use of a voucher system, or other system of reimbursement approved by the Secretary concerned, for payment for outer burial receptacles other than grave liners provided under such regulations or procedures.”

(b) CONFORMING AMENDMENTS.—(1) The section heading of such section is amended to read as follows:

“§ 2306. Headstones, markers, and burial receptacles”.

(2) The table of sections at the beginning of chapter 23 is amended by striking out the item relating to section 2306 and inserting in lieu thereof the following new item:

“2306. Headstones, markers, and burial receptacles.”.

SEC. 304. CLARIFICATION OF ELIGIBILITY OF MINORS FOR BURIAL IN NATIONAL CEMETERIES.

Section 2402(5) is amended by inserting after “minor child” the following: “(which for purposes of this chapter includes a child under 21 years of age, or under 23 years of age if pursuing a course of instruction at an approved educational institution)”.

SEC. 305. EXTENSION OF AUTHORITY TO TREAT ALTERNATIVE TEACHER CERTIFICATION PROGRAMS AS EDUCATIONAL INSTITUTIONS FOR CERTAIN EDUCATIONAL ASSISTANCE PURPOSES.

Section 3452(c) is amended in the second sentence by striking out “September 30, 1996” and inserting in lieu thereof “December 31, 1998”.

SEC. 306. DIRECT LOANS TO REFINANCE LOANS UNDER NATIVE AMERICAN VETERAN HOUSING LOAN PILOT PROGRAM.

(a) AUTHORITY.—Section 3762 is amended—

(1) by redesignating subsection (h) as subsection (i); and

(2) by inserting after subsection (g) the following new subsection (h):

“(h)(1) The Secretary may make direct loans to Native American veterans in order to enable such veterans to refinance existing loans made under this section.

“(2)(A) The Secretary may not make a loan under this subsection unless the loan meets the requirements set forth in subparagraphs (B), (C), and (E) of paragraph (1) of section 3710(e) of this title.

“(B) The Secretary may not make a loan under this subsection unless the loan will bear an interest rate at least one percentage point less than the interest rate borne by the loan being refinanced.

“(C) Paragraphs (2) and (3) of such section 3710(e) shall apply to any loan made under this subsection, except that for the purposes of this subsection the reference to subsection (a)(8) of section 3710 of this title in such paragraphs (2) and (3) shall be deemed to be a reference to this subsection.”.

(b) LOAN FEE.—Section 3729(a)(2)(E) of such title is amended by striking out “or 3712(a)(1)(F)” and inserting in lieu thereof “3712(a)(1)(F), or 3762(h)”.

SEC. 307. CLOTHING ALLOWANCE FOR INCARCERATED VETERANS.

(a) IN GENERAL.—Chapter 53 is amended by inserting after section 5313 the following new section:

“§ 5313A. Limitation on payment of clothing allowance to incarcerated veterans

“In the case of a veteran incarcerated in a Federal, State, or local penal institution for a period in excess of sixty days and furnished clothing without charge by the institution, the amount of any clothing allowance payable to the veteran under section 1162 of this title shall be reduced by an amount equal to 1/365th of the amount of the allowance otherwise payable under that section for each day during the 12-month period preceding the date of the payment of the allowance on which the veteran was so incarcerated.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 5313 the following new item:

“5313A. Limitation on payment of clothing allowance to incarcerated veterans.”.

SEC. 308. APPOINTMENT OF VETERANS SERVICE ORGANIZATIONS AS CLAIMANTS' REPRESENTATIVES.

(a) POWER OF ATTORNEY NAMING A VETERANS SERVICE ORGANIZATION.—Section 5902 is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection (c):

“(c)(1) Unless a claimant specifically indicates in a power of attorney filed with the Department a desire to appoint only a recognized representative of an organization listed in or approved under subsection (a), the Secretary may, for any purpose, treat the power of attorney naming such an organization, a specific office of such an organization, or a recognized representative of such an organization as the claimant's representative as an appointment of the entire organization as the claimant's representative.

“(2) Whenever the Secretary is required or permitted to notify a claimant's representative, and the claimant has named in a power of attorney an organization listed in or approved under subsection (a), a specific office of such an organization, or a recognized representative of such an organization without specifically indicating a desire to appoint only a recognized representative of the organization, the Secretary shall notify the organization at the address designated by the organization for the purpose of receiving the notification concerned.”.

(b) APPLICABILITY.—The amendments made by this section apply to any power of attorney filed with the Department of Veterans Affairs, regardless of the date of its execution.

SEC. 309. PROVISION OF COPIES OF BOARD OF VETERANS' APPEALS DECISIONS.

Section 7104(e) is amended to read as follows:

“(e)(1) After reaching a decision on a case, the Board shall promptly mail a copy of its written decision to the claimant at the last known address of the claimant.

“(2) If the claimant has an authorized representative, the Board shall—

“(A) mail a copy of its written decision to the authorized representative at the last known address of the authorized representative; or

“(B) send a copy of its written decision to the authorized representative by any means reasonably likely to provide the authorized representative with a copy of the decision within the same time a copy would be expected to reach the authorized representative if sent by first-class mail.”.

SEC. 310. EXTENSION OF CERTAIN AUTHORITIES FOR SERVICES FOR HOMELESS VETERANS.

(a) AUTHORITY FOR COMMUNITY-BASED RESIDENTIAL CARE FOR HOMELESS CHRONICALLY MENTALLY ILL VETERANS AND OTHER VETERANS.—Section 115(d) of the Veterans' Benefits and Services Act of 1988 (38 U.S.C. 1712 note) is amended by striking out “December 31, 1997” and inserting in lieu thereof “December 31, 1998”.

(b) AUTHORIZATIONS OF APPROPRIATIONS FOR HOMELESS VETERANS REINTEGRATION PROJECTS.—Section 738(e)(1) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11448(e)(1)) is amended by adding at the end the following:

“(E) \$10,000,000 for fiscal year 1997.

“(F) \$10,000,000 for fiscal year 1998.”.

TITLE IV—EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES

SEC. 401. PURPOSES.

Section 4301(a)(2) is amended by striking out “under honorable conditions”.

SEC. 402. DEFINITIONS.

Section 4303(16) is amended by inserting “national” before “emergency”.

SEC. 403. DISCRIMINATION AGAINST PERSONS WHO SERVE IN THE UNIFORMED SERVICES AND ACTS OF REPRISAL PROHIBITED.

Section 4311 is amended by striking out subsections (b) and (c) and inserting in lieu thereof the following:

“(b) An employer may not discriminate in employment against or take any adverse employment action against any person because such person (1) has taken an action to enforce a protection afforded any person under this chapter, (2) has testified or otherwise made a statement in or in connection with any proceeding under this chapter, (3) has assisted or otherwise participated in an investigation under this chapter, or (4) has exercised a right provided for in this chapter. This subsection shall apply with respect to a person regardless of whether the person has performed service in the uniformed services.

“(c) An employer shall be considered to have engaged in actions prohibited—

“(1) under subsection (a), if the person’s membership, application for membership, service, application for service, or obligation for service in the uniformed services is a motivating factor in the employer’s action, unless the employer can prove that the action would have been taken in the absence of such membership, application for membership, service, application for service, or obligation for service; or

“(2) under subsection (b), if the person’s (A) action to enforce a protection afforded any person under this chapter, (B) testimony or making of a statement in or in connection with any proceeding under this chapter, (C) assistance or other participation in an investigation under this chapter, or (D) exercise of a right provided for in this chapter, is a motivating factor in the employer’s action, unless the employer can prove that the action would have been taken in the absence of such person’s enforcement action, testimony, statement, assistance, participation, or exercise of a right.

“(d) The prohibitions in subsections (a) and (b) shall apply to any position of employment, including a position covered by section 4312(d)(1)(C).”.

SEC. 404. REEMPLOYMENT RIGHTS OF PERSONS WHO SERVE IN THE UNIFORMED SERVICES.

(a) **INCLUSION OF PREPARATION AND TRAVEL TIME PRIOR TO SERVICE.**—Section 4312(a) is amended by striking out “who is absent from a position of employment” and inserting in lieu thereof “whose absence from a position of employment is necessitated”.

(b) **LIMITATION ON SERVICE EXEMPTION TO WAR OR NATIONAL EMERGENCY.**—Section 4312(c)(4)(B) is amended to read as follows:

“(B) ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;”.

(c) **BRIEF, NONRECURRENT PERIODS OF SERVICE.**—Section 4312(d)(2)(C) is amended by striking out “is brief or for a nonrecurrent period and without a reasonable expectation” and inserting in lieu thereof “is for a brief, nonrecurrent period and there is no reasonable expectation”.

(d) **CONFORMING AMENDMENTS TO REDESIGNATIONS IN TITLE 10.**—Section 4312(c) is amended—

(1) in paragraph (3), by striking out “section 270” and inserting in lieu thereof “section 10147”; and

(2) in paragraph (4)—

(A) by striking out “section 672(a), 672(g), 673, 673b, 673c, or 688” in subparagraph (A) and inserting in lieu thereof “section 688, 12301(a), 12301(g), 12302, 12304, or 12305”; and

(B) by striking out “section 673b” in subparagraph (C) and inserting in lieu thereof “section 12304”; and

(C) by striking out “section 3500 or 8500” in subparagraph (E) and inserting in lieu thereof “section 12406”.

SEC. 405. REEMPLOYMENT POSITIONS.

Section 4313(a)(4) is amended—

(1) by striking out “uniform services” in subparagraph (A)(ii) and inserting in lieu thereof “uniformed services”; and

(2) by striking out “of lesser status and pay which” and inserting in lieu thereof “which is the nearest approximation to a position referred to first in clause (A)(i) and then in clause (A)(ii) which”.

SEC. 406. LEAVE.

Section 4316(d) is amended by adding at the end the following new sentence: “No employer may require any such person to use vacation, annual, or similar leave during such period of service.”.

SEC. 407. HEALTH PLANS.

Section 4317(a) is amended—

(1) by striking out “(a)(1)(A) Subject to paragraphs (2) and (3), in” and inserting in lieu thereof “(a)(1) In”;

(2) by redesignating clauses (i) and (ii) of paragraph (1) (as amended by paragraph (1) of this section) as subparagraphs (A) and (B), respectively;

(3) by redesignating subparagraph (B) as paragraph (2); and

(4) by redesignating subparagraph (C) as paragraph (3), and in that paragraph by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively, and by redesignating subclauses (I) and (II) as clauses (i) and (ii), respectively.

SEC. 408. EMPLOYEE PENSION BENEFIT PLANS.

The last sentence of section 4318(b)(2) is amended by striking out “services,” and inserting in lieu thereof “services, such payment period”.

SEC. 409. ENFORCEMENT OF EMPLOYMENT OR REEMPLOYMENT RIGHTS.

(a) TECHNICAL AMENDMENT.—The second sentence of section 4322(d) is amended by inserting “attempt to” before “resolve”.

(b) NOTIFICATION.—Section 4322(e) is amended—

(1) in the matter preceding paragraph (1), by striking out “with respect to a complaint under subsection (d) are unsuccessful,” and inserting in lieu thereof “with respect to any complaint filed under subsection (a) do not resolve the complaint,”; and

(2) in paragraph (2), by inserting “or the Office of Personnel Management” after “Federal executive agency”.

SEC. 410. ENFORCEMENT OF RIGHTS WITH RESPECT TO A STATE OR PRIVATE EMPLOYER.

Section 4323(a) is amended—

(1) in paragraph (1), by striking out “of an unsuccessful effort to resolve a complaint”; and

(2) in paragraph (2)(A), by striking out “regarding the complaint under section 4322(c)” and inserting in lieu thereof “under section 4322(a)”.

SEC. 411. ENFORCEMENT OF RIGHTS WITH RESPECT TO FEDERAL EXECUTIVE AGENCIES.

(a) REFERRAL.—Section 4324(a)(1) is amended by striking out “of an unsuccessful effort to resolve a complaint relating to a Federal executive agency”.

(b) ALTERNATIVE SUBMISSION OF COMPLAINT.—Section 4324(b) is amended—

(1) in the matter preceding paragraph (1), by inserting “or the Office of Personnel Management” after “Federal executive agency”; and

(2) in paragraph (1), by striking out “regarding a complaint under section 4322(c)” and inserting in lieu thereof “under section 4322(a)”.

(c) RELIEF.—Section 4324(c)(2) is amended—

(1) by inserting “or the Office of Personnel Management” after “Federal executive agency”; and

(2) by striking out “employee” and inserting in lieu thereof “Office”.

SEC. 412. ENFORCEMENT OF RIGHTS WITH RESPECT TO CERTAIN FEDERAL AGENCIES.

Section 4325(d)(1) is amended—

(1) by striking out “, alternative employment in the Federal Government under this chapter,”; and

(2) by striking out “employee” the last place it appears and inserting in lieu thereof “employees”.

SEC. 413. CONDUCT OF INVESTIGATION; SUBPOENAS.

Section 4326(a) is amended by inserting “have reasonable access to and the right to interview persons with information relevant to the investigation and shall” after “at all reasonable times,”.

SEC. 414. TRANSITION RULES AND EFFECTIVE DATES.

(a) REEMPLOYMENT.—Section 8(a) of the Uniformed Services Employment and Reemployment Rights Act of 1994 (Public Law 103–353; 108 Stat. 3175; 38 U.S.C. 4301 note) is amended—

(1) in paragraph (3), by adding at the end thereof the following: “Any service begun up to 60 days after the date of enactment of this Act, which is served up to 60 days after the date of enactment of this Act pursuant to orders issued under section 502(f) of title 32, United States Code, shall be considered under chapter 43 of title 38, United States Code, as in effect on the day before such date of enactment. Any service pursuant to orders issued under such section 502(f) served after 60 days after the date of enactment of this Act, regardless of when begun, shall be considered under the amendments made by this Act.”; and

(2) in paragraph (4), by striking out “such period” and inserting in lieu thereof “such 60-day period”.

(b) INSURANCE.—Section 8(c)(2) of such Act is amended by striking out “person on active duty” and inserting in lieu thereof “person serving a period of service in the uniformed services”.

SEC. 415. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this title shall take effect as of October 13, 1994.

(b) REORGANIZED TITLE 10 REFERENCES.—The amendments made by section 404(d) of this Act shall take effect as of December 1, 1994.

Amend the title to read as follows: “To amend title 38, United States Code, to improve the benefits programs administered by the Secretary of Veterans Affairs, to provide for a study of the Federal programs for veterans, and for other purposes.”.

INTRODUCTION

On April 29, 1996, Senator Robert J. Dole introduced S. 1711. As introduced, S. 1711 would have created a Commission to evaluate the programs of the Federal Government that assist members of the Armed Forces and veterans in readjusting to civilian life.

On June 29, 1995, the Chairman of the Committee, Senator Alan K. Simpson, introduced several bills at the request of the Administration, including S. 994, which would have clarified the eligibility of certain minors for burial in national cemeteries; S. 995, which would have restricted the payment of clothing allowances to incarcerated veterans and created a legal presumption that certain veterans are permanently and totally disabled; and S. 996, which would have reformed the Servicemen’s Group Life Insurance program and the Veterans’ Group Life Insurance program.

On May 13, 1996, Senator Simpson introduced several bills at the request of the Administration, including S. 1751, which would have revised procedures for providing claimants and their representatives copies of Board of Veterans’ Appeals decisions, and clarified claimants’ rights with respect to the appointment of service organization representatives.

On January 26, 1995, Senator Alfonse M. D’Amato introduced S. 281, which would have changed the date for the beginning on the Vietnam era for the purpose of veterans benefits from August 5, 1964, to December 22, 1961.

On May 3, 1995, Committee member Daniel K. Akaka, introduced S. 749 with the cosponsorship of the Ranking Minority Member of the Committee, Senator John D. Rockefeller IV. As introduced, S. 749 would have revised legal authorities relating to the Center for Minority Veterans and the Center for Women Veterans of the Department of Veterans Affairs (VA).

On October 19, 1995, Senator Akaka introduced S. 1342 with the cosponsorship of Senator Rockefeller, Senator Daniel K. Inouye, Committee member Paul Wellstone, and Senator Paul Simon. As introduced, S. 1342 would have authorized the Secretary of Veterans Affairs to make loans to refinance loans made to veterans under the Native American Veterans Direct Loan Program.

On May 23, 1996, the Committee held a hearing to receive testimony on pending legislation, including S. 1711, as introduced, S. 994, S. 995, S. 996, S. 1751, S. 281, S. 749, and S. 1342. Testimony was received from the Honorable Frank Q. Nebeker, Chief Judge, United States Court of Veterans Appeals; from the Honorable Charles L. Cragin, Chairman, Board of Veterans' Appeals, Department of Veterans Affairs; and from representatives of The American Legion, the Veterans of Foreign Wars, the Disabled American Veterans, the Paralyzed Veterans of America, the Vietnam Veterans of America, the Nurses Organization of Veterans Affairs, the National Association of VA Physicians and Dentists, the National Organization of Veterans' Advocates, and the Advisory Committee, Veterans Consortium Pro Bono Program. Testimony was also submitted for the record of the hearing by the Honorable Preston M. Taylor, Jr., Assistant Secretary of Labor for Veterans' Employment and Training, and by the Non Commissioned Officers Association of the United States.

COMMITTEE MEETING

After carefully reviewing the testimony from the foregoing hearing, the Committee met in open session on July 24, 1996, and voted unanimously to report S. 1711 with an amendment in the nature of a substitute that includes provisions from S. 1711, as introduced, S. 994, S. 995, S. 996, S. 1751, S. 281, S. 749, and S. 1342, as well as an original provision relating to VA authority to provide burial receptacles; an original provision extending an expiring authority for VA to recognize training programs for the completion of State-approved alternative teaching certifications as "educational institutions" for purposes of VA educational assistance programs; an original provision extending authority for the Homeless Veterans' Reintegration Project; and a provision derived from Title III of H.R. 2289, a bill approved by the House of Representatives on December 12, 1995, pertaining to technical amendments to the Uniformed Services Employment and Reemployment Rights Act of 1994, Public Law 103-353.

SUMMARY OF S. 1711 AS REPORTED

S. 1711, as reported (hereinafter referred to as the "Committee bill"), consists of four titles summarized below that would establish a Commission to evaluate the programs of the Federal Government that assist members of the Armed Forces and veterans in readjusting to civilian life; reform the Servicemen's Group Life Insurance program and the Veterans' Group Life Insurance program; modify the dates of the Vietnam era for certain purposes, and revise and improve, or extend, other provisions of law relating to VA benefits programs; and make technical amendments to the Uniformed Serv-

ices Employment and Reemployment Rights Act of 1994 (USERRA).

TITLE I—COMMISSION ON TRANSITION ASSISTANCE

Title I contains freestanding provisions that would:

1. Establish a 12-member Commission on Service Members and Veterans Transition Assistance (section 101).
2. Set forth the duties of the Commission to review the effectiveness and appropriateness of the veterans' transition and assistance programs, to make recommendations to Congress on ways to improve the programs and ensure their continued utility, and to issue certain reports to Congress (section 102).
3. Specify Commission powers to hold hearings, receive evidence, and secure necessary information from Federal agencies and departments (section 103).
4. Authorize Commission members' salaries and the appointment of an executive director, and specify other personnel administration matters (section 105).
5. Terminate the Commission 90 days after submission of its final report (section 106).
6. Provide for funding by the Secretary of Defense (section 108).

TITLE II—LIFE INSURANCE PROGRAMS

Title II contains amendments to title 38, United States Code, that would:

1. Rename the Servicemen's Group Life Insurance program as the Servicemembers' Group Life Insurance program and remove gender references with respect to that program (section 202).
2. Convert Retired Reservist Servicemembers' Group Life Insurance to Veterans' Group Life Insurance, and extend Veterans' Group Life Insurance to members of the Ready Reserves (section 203).
3. Provide for the optional conversion of Servicemembers' Group Life Insurance and Veterans' Group Life Insurance to commercial life insurance (section 204).

TITLE III—MISCELLANEOUS BENEFITS PROVISIONS

Title III contains freestanding provisions and amendments to title 38, United States Code, that would:

1. Redefine the term "Vietnam era" for purposes of veterans benefits (section 301).
2. Revise and clarify authorities relating to VA's Center for Minority Veterans and VA's Center for Women Veterans, and extend the termination date of the Center for Minority Veterans (section 302).
3. Authorize VA, in the provision of memorial benefits, to provide "outer burial receptacles" other than "grave liners," with any difference in the cost of such receptacles over the cost of grave liners being borne by the survivors of the deceased (section 303).
4. Clarify that an interred veteran's "minor children," who are eligible for burial in the national cemeteries, include children who, at death, were under 21 years of age or under 23 years of age if they were pursuing a full-time course of education (section 304).

5. Extend the expiration date of VA authority to treat alternative teacher certification programs as “educational institutions” for veterans’ educational assistance program purposes (section 305).

6. Authorize refinancing direct loans to home purchasers who financed purchases under the Native American Housing Loan Pilot Program so that such purchasers might take advantage of interest rate reductions (section 306).

7. Eliminate incarcerated veterans’ eligibility for clothing allowances (section 307).

8. Specify that veterans who designate a veterans service organization as their representative for purposes of pursuing a claim for veterans benefits shall be deemed to have appointed the organization, and not an individual employee of that organization, as representative unless they have indicated a contrary intention, and thereby clarify that VA notifications concerning a claim may be made to the organization and need not be made to any specific employee of the organization (section 308).

9. Require that the VA’s Board of Veterans’ Appeals mail decisions to all individual claimants, and in the case of claimants who have appointed authorized representatives, that it mail or, at VA’s option, send by means other than the mail copies of decisions to the claimant’s representative (section 309).

10. Extend through 1998 VA’s pilot program of providing community-based treatment and rehabilitation services to homeless veterans (section 310(a)).

11. Authorize appropriations for Homeless Veterans Reintegration Projects under section 738(e)(1) of the Stewart B. McKinney Homeless Assistance Act in the amount of \$10 million for fiscal years 1997 and 1998 (section 310(b)).

TITLE IV—EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES

Title IV contains freestanding provisions and technical and clarifying amendments to title 38, United States Code, that would:

1. Clarify the character of service that is a prerequisite to the applicability of rights specified in the Uniformed Services Employment and Reemployment Rights Act of 1994 (section 401).

2. Clarify that the definition of “uniformed services” may include persons who are so designated by the President in time of war or national emergency (section 402).

3. Clarify that the burden of proof provision specified in section 4311 applies to both anti-reprisal and anti-discrimination situations (section 403).

4. Clarify that the time during which an individual is entitled to reemployment rights and benefits is not limited to actual service time only, but also includes, for example, preparation and travel time prior to service (section 404(a)).

5. Clarify that a person ordered to, or retained on, active duty because of a war or a national emergency would be exempt from the 5-year cumulative length of absence limitation under section 4312(c)(4)(B) (section 404(b)).

6. Clarify provisions establishing an employer’s duty to rehire when employment was for a brief, nonrecurrent period of time (section 404(c)).

7. Clarify that reemployed persons who are not qualified to re-assume their prior positions, or are not qualified to assume the positions they would have occupied had their employment not been interrupted, shall be placed in positions that most nearly approximate such positions and not necessarily in positions that are of lesser status and pay than such positions (section 405).

8. Clarify that employers may not require a person whose employment is interrupted by service to use vacation, annual, or similar leave during such service (section 406).

9. Clarify that the maximum time allowed for persons to make employee contributions to pension benefit plans under section 4318(b)(2) shall be 5 years (section 408).

10. Make technical corrections to section 4322(d) and section 4322(e) relating to enforcement of employment or reemployment rights and the duty of the Department of Labor to attempt to resolve complaints of USERRA violations (sections 409(a) and 409(b)(1)).

11. Make a technical correction to section 4322(e) relating to notification requirements with respect to unresolved complaints against a Federal executive agency or the Office of Personnel Management (section 409(b)(2)).

12. Make technical corrections to section 4323(a) relating to enforcement of rights against a State or private employer, to remove superfluous language, and to correct an erroneous cross reference (section 410).

13. Make a technical correction to section 4324(a)(1), relating to the referral of complaints to the Office of Special Counsel, to remove superfluous language (section 411(a)).

14. Make technical corrections to provisions of sections 4324(b) and 4324(c)(2) relating to submission of complaints and enforcement of rights with respect to Federal executive agencies, to add a reference to the Office of Personnel Management, to correct an erroneous cross reference, and to correct the erroneous use of the term "employee" instead of "Office" (sections 411(b) and 411(c)).

15. Amend section 4325(d)(1) to clarify that the Department of Labor is not required to provide information to Federal employees concerning alternative Federal employment, and to correct a grammatical error (section 412).

16. Clarify that, during investigations to enforce USERRA, the Department of Labor shall have access not only to documents, but also to persons with relevant information (section 413).

17. Clarify the transition rules specified in section 8(a) of USERRA (section 414(a)).

18. Clarify that the transition rules specified in section 8(c)(2) of USERRA pertaining to health plans apply not only to an "active duty" service member but also to all persons in service as encompassed by the term a "service in the uniformed services" as defined in section 4303(13) (section 414(b)).

19. Specify that the amendments set forth in Title IV would be effective on October 13, 1994 (the effective date of USERRA) except for the conforming amendments made by section 404(d) which would be effective on December 1, 1994 (section 415).

DISCUSSION

TITLE I—COMMISSION ON TRANSITION ASSISTANCE

Title I of the Committee bill, which is derived from S. 1711 as introduced, would authorize the establishment of a Commission on Service Members and Veterans Transition Assistance.

Background

Under current law, various Federal agencies, including the Departments of Defense, Veterans Affairs, and Labor, and the Small Business Administration, administer programs to assist active duty service personnel approaching separation from the service, and veterans, in making the transition from service to civilian life. Among these programs are education assistance programs, job training programs, vocational rehabilitation programs (for disabled veterans), job placement assistance and counseling programs, home loan programs, small business assistance, and other assistance programs.

*Committee Bill**Section 101. Establishment of the Commission on Service Members and Veterans Transition Assistance*

Section 101 would establish a Commission on Service Members and Veterans Transition Assistance having a membership of 12 persons. Commission members would be appointed by the chairs, in consultation with the ranking minority members, of the Senate and House Committees on Veterans' Affairs, the Senate Committee on Armed Services, and the House Committee on National Security. Two members of the Commission—one appointed by each of the chairs of the Committees on Veterans' Affairs—would be representatives of veterans service organizations. No more than seven members of the Commission would be members of the same political party, and, to the extent practicable, all members of the Commission would be veterans.

Section 102. Duties of the Commission

Section 102 specifies that the Commission would review the adequacy, effectiveness and appropriateness of transition and assistance programs in place to assist members of the Armed Services in adjusting to civilian life upon separation. The Commission would examine, among other things, educational assistance programs; job counseling, job training, and job placement programs; rehabilitation and training programs; housing loan programs; small business loan and small business assistance programs; employer training and union apprenticeship programs; Federal Government personnel policies, including veterans' preference policies; and programs to assist the transition of military families. The Commission would review the allocation of responsibility for these various transition programs among the various Federal departments and agencies, and determine the feasibility and desirability of consolidating such programs in one department or agency. Upon the completion of its review, the Commission would make recommendations to Congress

on ways to improve, and to ensure the continued utility of, these programs.

The Commission would be required to submit a preliminary report, detailing the planned work of the Commission, within 90 days of the appointment of its membership, and a final report, specifying the Commission's findings and recommendations for legislative and administrative action, within 1 year of the date of the first meeting of the Commission. The Departments of Defense and Veterans Affairs would be required to jointly transmit their comments on the Commission's final report to Congress.

Section 103. Powers of the Commission

The Commission would be authorized to hold hearings and receive testimony and evidence. Federal agencies would be directed to furnish requested information to the Commission.

TITLE II—LIFE INSURANCE PROGRAMS

Title II of the Committee bill, which is derived from S. 996 as introduced, would change the name of the Servicemen's Group Life Insurance (SGLI) program, merge Retired Reservist SGLI into the Veterans' Group Life Insurance (VGLI) program, extend VGLI insurance benefits to members of the Ready Reserves, and authorize conversion of VGLI policies to individual commercial policies at any time.

Background

VA administers six life insurance programs, and supervises the administration of two other insurance programs, for the benefit of service members, veterans, and their beneficiaries. At the end of 1995, the total amount of insurance under these programs was over \$491 billion. The two programs supervised by VA, but administered under a contractual agreement by the Prudential Insurance Company, are the Servicemen's Group Life Insurance program and Veterans' Group Life Insurance program.

The SGLI program provides low-cost group life insurance protection to service members on active duty and to ready reservists, retired reservists, members of the Commissioned Corps of the National Oceanic and Atmospheric Administration and the Public Health Service, cadets and midshipmen of the four service academies, and members of the Reserve Officer Training Corps. At the end of 1995, 2.7 million individuals were covered under this program.

The VGLI program provides post-separation insurance by facilitating the conversion of SGLI policies into 5-year renewable term policies. At the end of 1995, 349,256 enrollees had insurance coverage under VGLI.

Committee bill

Section 202. Renaming of Servicemen's Group Life Insurance

Section 202 would rename Servicemen's Group Life Insurance as "Servicemembers' Group Life Insurance," and make conforming amendments elsewhere in provisions of law referring to SGLI to make the program's title gender-neutral.

Section 203. Merger of Retired Reservist Servicemembers' Group Life Insurance and Veterans' Group Life Insurance and Extension of Veterans' Group Life Insurance to Members of the Ready Reserve

Under current law, when members of the Ready Reserve retire with 20 years of service, or are transferred to the Retired Reserve under temporary special retirement authority, they may continue SGLI coverage in force as Retired Reservist SGLI. Such SGLI policies expire when the former Ready Reserve member begins receiving retirement pay or reaches age 61, whichever comes first. Section 203 would eliminate this time limitation on Retired Reservist SGLI by merging Retired Reservist SGLI into VGLI, a program which offers lifetime coverage to policy holders. Thus, lifetime coverage would be made available to retired reservists by providing them access to the Veterans' Group Life Insurance program.

Section 203 would also extend eligibility for Veterans' Group Life Insurance coverage to members of the Ready Reserve of a uniformed service. Under current law, members of the Ready Reserves who separate with fewer than 20 years service are not eligible to convert their SGLI policies to VGLI.

Section 204. Conversion of SGLI and VGLI Policies to Commercial Life Insurance Policies

Under current law, service members may not convert SGLI insurance policies to commercial policies when they separate from service. Rather, they may enroll in VGLI upon separation. VGLI policies may be converted into commercial policies, but only after they have been held for 5 years.

Some consumers prefer commercial policies due, for example, to the fact that they are "whole life" policies. Others prefer such policies due to the fact that they are assignable (and they may, therefore, be "cashed out" before death) in some States. The 5-year waiting period now imposed before VGLI policies can be converted—and the fact that SGLI policies cannot be converted at all—currently block, or delay, consumer choice to convert to commercial policies. Section 204 would eliminate these restrictions on conversion.

TITLE III—MISCELLANEOUS BENEFITS PROVISIONS

Title III of the Committee bill, which is derived from S. 281, S. 749, S. 994, S. 995, S. 1342, and S. 1751, and also contains original provisions, would make various changes in law as outlined below.

Section 301. Expansion of period of vietnam era for certain veterans

The term "Vietnam era" is defined under current law as the period between August 5, 1964 (the date of the incident which led to the adoption of the Gulf of Tonkin Resolution) and May 7, 1975. Veterans who suffer from certain specified diseases are entitled to a presumption of service connection if they served within the Republic of Vietnam during "the Vietnam era," 38 U.S.C. § 1116, and veterans who so served are also eligible for hospital, nursing home, and domiciliary care under 38 U.S.C. § 1710(a)(1)(G), as specified in 38 U.S.C. § 1710(e)(1)(A). In addition, all veterans who served within the time frame of the "Vietnam era" are "wartime" veterans

whether or not they served in the Republic of Vietnam, and are thus entitled to veterans benefits, principally pension benefits under chapter 15 of title 38, to which “wartime veterans” alone are entitled.

United States military personnel were, in fact, serving within the borders of the Republic of Vietnam prior to August 5, 1964, principally as advisors to the armed forces of the Republic of South Vietnam.

Section 301 of the Committee bill would amend the definition of “Vietnam era” and, for general purposes, define the “Vietnam era” as beginning on February 28, 1961, the date accepted as the date U.S. forces generally began to accompany their Vietnamese counterparts on combat operations. It would apply that definition, however, only with respect to those veterans who actually served within the borders of the Republic of Vietnam during that time frame. Thus, the Committee intends that, for purposes of benefits made available to “wartime” veterans only, service between February 28, 1961, and August 4, 1964, would qualify as “wartime” service only if the veteran actually served in the Republic of Vietnam during that time period.

Herbicides and defoliants were not in use throughout the “Vietnam era” as that term would be newly defined under the Committee bill. Rather, such materials were not introduced into the Republic of Vietnam until January 9, 1962. Therefore, section 301 of the Committee bill specifies that for purposes of sections 1116 and 1710 of title 38—provisions of law which specify benefits based on presumptive exposure to herbicides and defoliants—the term “Vietnam era” would be limited to the period between January 9, 1962, and May 7, 1975. The Committee intends that benefits that are premised on presumed exposure to defoliants and herbicides shall be available to all who served in the Republic of Vietnam when such materials were present there, but that they not be extended to those who served in the Republic of Vietnam only before such materials were introduced.

Section 302. Revision of authority relating to centers for minority veterans and women veterans

Section 509 of Public Law 103–446 created within VA a Center for Minority Veterans, 38 U.S.C. § 317, and a Center for Women Veterans, 38 U.S.C. § 318.

Section 302 of the Committee bill would make a series of perfecting, conforming, and technical amendments to sections 317 and 318 of title 38, United States Code. It would provide that the Directors of the two Centers may be either non-career or career employees; currently, they must be non-career employees. It would provide that the Director of the Center for Minority Veterans advise the Secretary of VA on issues relating to minority group-focused medical research; currently, the Director of the Center for Women Veterans performs a parallel function as to research focused on women veterans. It would require that the Center for Minority Veterans provide support and administrative services to the Advisory Committee on Minority Veterans (created pursuant to section 510 of Public Law 103–446); currently, the Center for Women Veterans provides support services to the Advisory Committee on Women

Veterans. It would define the term “minority veteran”; currently, that term is not defined. It would clarify the functions of the Center for Women Veterans and the Advisory Committees on Minority and Women Veterans. Finally, section 302 would extend the “sunset” date of the Advisory Committee on Minority Veterans from December 31, 1997, to December 31, 1999.

Section 303. Outer burial receptacles

Under current law, the Department of Veterans Affairs “shall provide * * * grave liner[s]” for graves in national cemeteries, and the Department of the Army “may provide” grave liners in Arlington National Cemetery. 38 U.S.C. § 2306(d)(1). Grave liners are typically comprised of multiple slabs of concrete which are fitted together in the grave around the casket. They are not water tight.

Grave liners reduce maintenance costs at cemeteries by preventing the ground over and around the casket from sinking and by preventing grave headstones from sinking or tilting. Further, apart from considerations purely associated with maintenance, grave liners assure the continuation of regular surface contours in cemeteries, advancing both aesthetic and public safety purposes. Unintended surface irregularities are not pleasing to the eye, and they increase the dangers of falls and other accidents by cemetery staff and visitors.

Grave liners are but one type of burial receptacle currently available. Another type of receptacle which has gained some favor with consumers is a “burial vault,” a single-piece, water-tight, concrete enclosure for the casket which is lowered into the grave ahead of the casket. The Committee understands that burial vaults serve all of the maintenance, aesthetic, and safety purposes that grave liners serve. They are, however, more expensive than grave liners. Nonetheless, consumers of burial services at non-VA and Department of the Army facilities often choose such vaults, reportedly due to their water-tight characteristic.

Section 303 of the Committee bill would remove the specific reference to “grave liners” in sections 2306(d)(1) and (d)(2), which language might be construed to require, or authorize, the providing of grave liners only in National Cemetery System (NCS) facilities or in Arlington National Cemetery. It would substitute in place of that language the term “outer burial receptacle.” The Committee intends that VA would thereby be required, and the Department of the Army would thereby be authorized, to furnish grave liners or burial vaults or other casket receptacles as provided by regulations or procedures adopted to implement this statutory change. The Committee intends that the survivors of deceased persons who are eligible for interment in national cemeteries and in Arlington National Cemetery be provided with the choices available to other consumers. Thus, it intends that they be allowed to choose grave liners, burial vaults, or other products that might be developed, so long as such choices are consistent with the maintenance, aesthetic and public safety considerations noted above.

The Committee is aware that NCS and Department of the Army resources are limited. The Committee bill provides, therefore, that section 303 shall be implemented in a fashion which results in no additional costs being incurred by VA or the Department of the

Army. Specifically, section 303 states that regulations or procedures adopted under section 303 may allow persons to elect burial receptacles other than grave liners and, if they do, would require them to pay any additional costs associated with such products and, in addition, an amount which reflects the administrative costs incurred in providing, and procuring, that product choice. Section 303 also provides flexibility in implementing cost recovery mechanisms by authorizing the use of a voucher system.

Section 304. Clarification of eligibility of minors for burial in national cemeteries

Under current law, an interred veteran's surviving spouse when he or she dies, and the interred veteran's children who are minors when they die, may be buried with a deceased veteran in a national cemetery. 38 U.S.C. § 2402(5). While section 2402 establishes eligibility of a veteran's "minor child" for burial in a national cemetery, it does not define the term "minor child." Since VA defines "minor child" in various ways for various program purposes, potential confusion may arise as to burial eligibility—confusion which would be particularly regrettable were it to arise, as here, at a time of family distress.

Section 304 would remove such confusion by statutorily defining "minor child" for purposes of eligibility for interment in a national cemetery. It specifies that, for such purposes, a "minor child" will be one who is under 21 years of age, or one who is under 23 years of age if the child was a student at the time of death. The Committee has adopted the definition of "minor child" that VA had previously promulgated by regulation, 38 C.F.R. § 1.620(g). The Committee thus intends and expects that there will be no change in VA practice as a result of this provision.

Section 305. Extension of authority to treat alternative teacher certification programs as educational institutions for certain educational assistance purposes

VA beneficiaries are eligible for "Montgomery GI Bill" (MGIB) educational assistance if they participate in a "program of education" offered by an "educational institution." See 38 U.S.C. §§ 3452(b) and 3452(c). Section 603(a) of Public Law 103-446 redefined the term "educational institution" in section 3452(c) and thereby created a pilot program authorizing the receipt of MGIB assistance for participation, through September 30, 1996, in training for completion of alternative teacher certification programs. Such programs are designed to facilitate the certification of persons for teaching positions through nontraditional curricula and to encourage the entry into the teaching profession of individuals whose undergraduate training was not in education.

Section 305 of the Committee bill would extend this pilot program through December 31, 1998.

Section 306. Direct loans to refinance loans under the Native American Veteran Housing Loan Pilot Program

Public Law 102-547 created a 5-year pilot program for direct lending by VA to veterans to finance the purchase or construction of homes on U.S. trust lands. 38 U.S.C. § 3762. Direct loans are

needed because commercial lenders are reluctant, even with a VA loan guarantee, to lend to Native American veteran-homeowners who wish to buy or build on trust lands since such lands cannot be assigned and lenders, therefore, cannot foreclose on them.

VA's other home loan programs allow for facilitated refinancing in the event of significant decreases in interest rates. When the Native American Housing Loan Pilot Program was created, no such provision was included in the pilot program.

Section 306 would authorize refinancing direct loans to borrowers under the Native American Housing Loan Pilot Program when interest rates have dropped 1 percentage point below the rate borne by the existing loan being refinanced. The Committee intends that Native American borrowers, like all borrowers, have the benefit of refinancing in situations where interest rates have dropped significantly.

Section 307. Clothing allowance for incarcerated veterans

Under current law, a veteran who has a service-connected disability which requires the wearing of a prosthetic device or the use of a skin medication which damages the veteran's clothing is eligible for a "clothing allowance." The purpose of the clothing allowance, which is currently set at \$503 per year and which is modified from time to time to reflect increases in the cost of living, is to assist the veteran in offsetting the added cost of clothing incurred as a consequence of his or her service-connected disability.

Incarcerated persons typically receive clothing, as needed, from penal authorities at no expense to the incarcerated person. In such cases, the incarcerated veteran will have incurred no personal expense in replacing clothing damaged by his or her prosthetic device or medications. Section 307, therefore, would abolish the clothing allowance as to such persons if they are furnished clothing without charge by the custodial institution. It would do so by reducing the annual allowance by 1/365 for each day in excess of 60 days that the veteran is incarcerated.

Section 308. Appointment of veterans service organizations as claimants' representatives

Current law authorizes VA to recognize any individual, and certain veterans service organizations, in preparing, presenting, and prosecuting claims for VA benefits. See 38 U.S.C. §§ 5902(a)(1), 5903, 5904(a). As a matter of practice, VA has recognized any accredited representative of a veterans service organization as a particular claimant's representative in cases where the claimant has filed a power of attorney designating the organization itself or any office or representative of that organization. In *Leo v. Brown*, 8 Vet. App. 410 (1995), the Court of Veterans Appeals (CVA) held that delivery of a decision by the Board of Veterans' Appeals (BVA) to a service organization office other than the office specified by the claimant is defective and that, therefore, an apparently late filing of an appeal could not be ruled untimely based on the running of a filing deadline from that date of defective delivery.

Section 308 of the Committee bill would amend section 5902 to authorize VA to treat a power of attorney which names a veterans service organization as the claimant's representative as naming the

entire organization as the representative absent an indication in the power of attorney form of a claimant's intention to name a specific representative only. Thus, in cases where a veterans service organization is named without an indication of an intention to limit that naming to a specific representative only, VA notifications could be sent to the organization at the address designated by the organization for the receipt of such notices.

Section 309. Provision of copies of Board of Veterans' Appeals decisions

Under current law, BVA must "promptly mail * * * written decision[s] to the claimant and the claimant's authorized representative." 38 U.S.C. § 7104(e). As a matter of practice, BVA had, at one time, used methods of delivery other than the mails, for example, hand delivery, in supplying copies of decisions to claimants' representatives. In *Trammell v. Brown*, 6 Vet. App. 181 (1994), CVA held that a delivery of a decision by a method other than the mails does not accord with statute, and that an apparently late filing of an appeal by a claimant who had received delivery by means other than the mails was, therefore, timely filed. See also *Davis v. Brown*, 7 Vet. App. 298 (1995).

Section 309 of the Committee bill would amend section 7104(e) to authorize BVA, in cases where a claimant has an authorized representative, either to mail or to otherwise deliver copies of written decisions to the claimant's representative. As it would be amended, section 7104(e) would continue to mandate that in all cases, that is, whether or not the claimant has an authorized representative, copies of decisions would be mailed to the claimant. Thus, in cases where a claimant has a representative, the Committee intends that service of decisions be carried out twice, once, by mail to the claimant, and, second, by mail or other means, as specified in the statute, to the claimant's representative.

Section 310. Extension of certain authorities for services for homeless veterans

Section 115 of Public Law 100-322 established a pilot program authorizing VA to provide community-based treatment and rehabilitation services to homeless veterans. Under this authority, VA provides services to homeless veterans, directly or by contract, in halfway houses, therapeutic communities, psychiatric residential treatment centers, and other community-based treatment facilities. Under current law, this authority expires on December 31, 1997.

The Homeless Veteran Reintegration Project (HVRP), 42 U.S.C. § 11448, was authorized by the Stewart B. McKinney Homeless Assistance Act, Public Law 100-77, 42 U.S.C. chapter 119. It authorizes the Secretary of Labor to establish programs to assist homeless and indigent veterans in returning to productive life. Appropriations for this program are authorized through fiscal year 1996 only. See Public Law 104-110, § 102(d).

Section 310 of the Committee bill would authorize \$10 million in appropriations for HVRP for each of two additional fiscal years, fiscal years 1997 and 1998. In addition, it would extend authority for VA's pilot program for community-based treatment and rehabilitation services to homeless veterans through calendar year 1998.

TITLE IV—EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS
OF THE UNIFORMED SERVICES

Title IV of the Committee bill is derived from Title III of H.R. 2289, a bill which was approved by the House of Representatives on December 12, 1995, and referred to the Committee on December 13, 1995. Title IV would make technical and clarifying amendments to the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Public Law 103–353.

Background

Provisions of Federal law relating to the reemployment rights of members of the uniformed services date from the enactment of the Selective Training and Service Act of 1940. Since that time, employment and reemployment rights have remained an element of Federal law. They are currently codified in chapter 43 of title 38, United States Code.

During the 50-plus year history of veterans' reemployment laws, the uniformed forces have changed, most notably in recent years with the emergence of greater total force responsibilities assumed by reserve components. At the same time, civilian workplace practices, particularly compensation, benefits, and pension practices, have changed. Veterans' reemployment laws have been modified over the years in an effort to keep pace with such changes. In addition, an overlay of Federal case law has developed which, among other things, applies the law to evolving circumstances.

Nonetheless, by 1988, the desirability of undertaking a broad review of veterans' reemployment rights laws became apparent. An executive branch task force, comprised of employees of the Departments of Labor, Defense, and Justice, and the Office of Personnel Management, was formed to undertake such a review, and to formulate recommended revisions to veterans' reemployment rights laws. This task force developed recommendations and draft proposals over a 3-year period, and legislation to recodify veterans' reemployment rights laws was introduced in the 102nd Congress as a direct result of these task force deliberations.

H.R. 1578 was reported on May 9, 1991 (H. Rpt. 102–56), and approved by the House of Representatives on May 14, 1991. The Senate approved the House measure on October 1, 1992, with amendments derived from S. 1095, which had been reported by the Senate Committee on Veterans Affairs on November 7, 1991 (S. Rpt. 102–203). On October 6, 1992, the House agreed to the Senate measure, but with further amendments. Differences between the House and Senate bills had not been resolved when the 102nd Congress adjourned.

In the 103rd Congress, H.R. 995, a bill derived from H.R. 1578 as passed by the House on October 6, 1992, was reported on April 28, 1993 (H. Rpt. 103–65), and approved by the House on May 4, 1993. In the Senate, S. 843, derived from H.R. 1578, was reported on July 1, 1993 (S. Rpt. 103–158), and passed by the Senate on November 2, 1993. On November 8, 1993, the Senate approved H.R. 995, as amended to substitute the text of S. 843. On September 13, 1994, the House approved H.R. 995, as amended, with a further amendment, and on September 28, 1994, the Senate approved H.R.

995 as so amended, clearing the measure for the President. Public Law 103-353, the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), was signed into law by the President on October 13, 1994.

Public Law 103-353 was a relatively lengthy, complex, and technical piece of legislation. Accordingly, the Committee anticipated that the need for technical and clarifying amendments might become apparent when the enforcing agency (the Department of Labor), veterans service organizations, and employers began to implement USERRA. Recommended amendments of a technical and clarifying nature were, in fact, presented to the Committee informally by the Department of Labor, and to the House Committee on Veterans' Affairs. The Ranking Minority Member of the House Committee, the Honorable G.V. ("Sonny") Montgomery, introduced a bill, H.R. 1941, on June 28, 1995, which incorporated those recommended technical changes. Title III of H.R. 2289, as reported by the House Committee on Veterans' Affairs on December 11, 1995 (H. Rpt. 104-397), and as passed by the House on December 12, 1995, was derived from that bill. As indicated above, Title IV of S. 1711 is derived from Title III of H.R. 2289.

Committee Bill

Section 401. Purposes

Section 4304 of title 38, United States Code, states that rights specified in USERRA are terminated if the former service member is separated from service with a dishonorable or bad conduct discharge, is separated other than under honorable conditions as specified by regulation, or, in the case of commissioned officers, if the former service member is dismissed or dropped from the rolls in accordance with 10 U.S.C. § 1161. By necessary implication, USERRA rights are not terminated in circumstances of separation from the service under conditions other than those so specified.

Section 4301(a)(2) states that one of the purposes of USERRA is to "minimize the disruption to the lives of persons performing service * * * by providing for the prompt reemployment of such persons upon their completion of such service *under honorable conditions* * * *" (emphasis added). This language might unintentionally create ambiguity with respect to the intent of the Congress in stating in section 4304 that USERRA protections are terminated only under conditions as stated in that section and, at the same time, appearing to suggest in section 4301 that separation from service must have been "honorable." More significantly perhaps, questions might be raised concerning when (if ever) separation might be less than "under honorable conditions," and yet not be within the disqualifying circumstances specified in section 4304, and, if such "in between" circumstances might exist, whether or not USERRA protections are operative.

Section 401 of the Committee bill would eliminate these unintended ambiguities and questions by striking the words "under honorable conditions" from section 4301 of title 38. The Committee intends that section 4304, and that section alone, specifies when USERRA benefits are unavailable due to the character of service of the former service member.

Section 402. Definitions

Section 4303(16) of title 38, United States Code, defines “uniformed services” and includes within that definition “persons designated by the President in time of war or emergency.” The term “emergency,” as used in this context, has traditionally been associated with *national* emergencies; therefore, it is commonly modified by the term “national.” USERRA did not include the modifier “national” in its definition. It thereby potentially gives rise to questions whether a departure from traditional usage was intended and, if so, what scope did the Congress intend the term “emergency” to have.

The Committee bill would add the modifier “national” prior to the term “emergency” in the definition of “uniformed services” to preclude such confusion. The Committee intends that the statutory definition of those in the “uniformed services” include those designated by the President in times of “national emergency” as that term is commonly used.

Section 403. Discrimination against persons who serve in the uniformed services and acts of reprisal prohibited

Section 4311(b) of title 38, United States Code, provides that an employer will be found to have violated the anti-discrimination provisions of section 4311(a) if the employee’s membership in, application for membership in, performance of duty in, or obligation to perform duty in the uniformed services is a motivating factor in the employer’s action, unless the employer can prove that the action alleged to be discriminatory would have been taken in any case.

Section 4311(c)(1) provides that an employer may not retaliate against persons due to certain protected activities. In contrast to subsection 4311(b), however, that subsection does not set forth the standard for finding violations of this anti-retaliation provision, or the burden of proof to be borne by employers in defending against claims of retaliation.

The Committee bill would reorder section 4311 to specify the anti-discrimination protections in subsection (a), to specify the anti-retaliation protections in subsection (b), and to provide in subsection (c) that the standards and burdens of proof now described in subsection (b), as described above, would apply to both discrimination and retaliation claims.

The Committee bill would also reconfigure current subsection (c)(2) as subsection (d) to clarify that both the anti-discrimination and anti-retaliation prohibitions in section 4311 apply to any position of employment, including positions which are only for brief, nonrecurrent periods as described in section 4312(d)(1)(C).

Section 404. Reemployment rights of persons who serve in the uniformed services

Section 4312(a) of title 38, United States Code, specifies the reemployment rights of persons who are “absent from a position of employment by reason of service * * *” Section 4312(e) sets forth the timeframes within which persons eligible for such protections shall return to work after a period of service. Section 4312 currently contains no specific provision dealing with time off prior to performing service.

The Congress never intended that USERRA preclude service personnel from leaving civilian employment so as to arrive timely and safely at the site of service. Accordingly, the Committee bill would amend section 4312(a) so that employees must be given the time off “necessitated” by service. This provision is consistent with current law. See *Sawyer v. Swift & Co.*, 610 F.Supp. 38, 41–42 (D. Kan. 1985), rev’d on other grounds 836 F.2d 1257 (10th Cir. 1988).

The protections afforded by section 4312 apply to persons whose cumulative service does not exceed 5 years. In defining 5 years for this purpose, section 4312(c)(4)(B) exempts service “during a war or during a national emergency * * *”

The Committee bill would amend section 4312(c)(4)(B) to require that for the exemption from the “5-year rule” to apply, the person affected would have to have been ordered or retained on active duty due to—and not merely coincident with—the war or national emergency.

Section 4312(d)(1)(C) provides that an employer is not required to reemploy a person who leaves for service from employment that was for a “brief, nonrecurrent period * * *” Section 4312(d)(2)(C) refers to proceedings involving questions of whether employment was “brief” or “nonrecurrent,” but that subsection uses different phraseology in describing such employment from that used in subsection (d)(1)(C).

The Committee bill would amend section 4312(d)(2)(C) to reflect phraseology that is consistent with that used in section 4312(d)(1)(C).

Section 405. Reemployment positions

Section 4313 of title 38, United States Code, details the positions to which service members are entitled upon reinstatement after service. Subsection 4313(a)(4) specifies the positions to which persons not qualified for their preservice or “escalator” positions, for reasons other than disability incurred in, or aggravated during, service, will be entitled.

Unlike the subsections of section 4313 which precede it, subsection (a)(4) of section 4313 does not provide, as a last resort, for reemployment in a position which is the nearest approximation of the reemployed person’s preservice or “escalator” position. The Committee bill rectifies this unintended omission by adding such language to subsection 4313(a)(4). It also corrects a purely technical error in that section.

Section 406. Leave

Section 4316(d) of title 38, United States Code, expressly allows the service member to choose to use vacation, annual, or similar leave with pay while on military leave. This provision is intended to preclude an employer from forcing a service member to use leave, paid or unpaid, against his or her will.

Notwithstanding this intent, as shown in the legislative history of section 4316(d), see H. Rept. 103–65 at 35, it has come to the Committee’s attention that questions have arisen concerning this provision. Indeed, the Committee has learned that some employers are reportedly attempting to require that service members use va-

cation leave while in service when to do so is not pursuant to a service member's request.

The Committee bill would clarify that it is a violation of section 4316(d) for an employer to require a service member to use paid or unpaid vacation, annual, or similar leave when the use of such leave is not requested by the service member. This policy, as clarified in the Committee bill, is consistent with existing law. See *Hilliard v. New Jersey Army Nat'l Guard*, 527 F. Supp. 405 (D. N.J. 1981); *Graham v. Hall-McMillan Co., Inc.*, 925 F. Supp. 437 (N.D. Miss. 1996).

Section 407. Health plans

Section 4317 of title 38, United States Code, contains a number of purely technical errors. The Committee bill corrects them.

Section 408. Employee pension benefit plans.

Section 4318(b)(2) of title 38, United States Code, currently allows a reemployed service member to make employee contributions or elective deferrals over a period "whose duration is three times the period of the person's service in the uniformed services, not to exceed five years."

The language of section 4318(b)(2) is susceptible to misinterpretation. Specifically, it could be argued that it is not entirely clear whether the phrase "not to exceed five years" refers to the period of service or to the period within which employee contributions may be made.

The Committee bill would amend the language of section 4318(b)(2) to clarify that reemployed persons shall be entitled to make employee contributions up to 5 years after returning to employment.

Section 409. Enforcement of employment or reemployment rights

Section 4322(d) of title 38, United States Code, requires that the Secretary of Labor "resolve [each] complaint" for enforcement of employment or reemployment rights which is filed. The actual resolution of each filed complaint by the Secretary of Labor is a desirable goal. However, as was recognized by the Congress by the use of the term "unsuccessful" in sections 4322(e) and 4323(a)(1), it is not an achievable one. The Committee bill would modify section 4322(d) to clarify that the Secretary must "attempt to" resolve each complaint. It would also modify sections 4322(e), 4323(a)(1), 4324(a)(1), and 4324(c)(2) to remove the value-laden term "unsuccessful."

Section 4322(e) refers to the Department of Labor's duty, in the event that a complaint is not resolved by that agency, to notify persons of their rights to pursue other remedies. In the case of complaints against Federal agencies, those remedies are specified in section 4324. Claimants may proceed under section 4324 against the Office of Personnel Management (OPM) as an employer like any Federal agency, but may also seek redress under section 4324 against OPM to assure the execution of other OPM duties, for example, its duties on behalf of employees of the Federal Bureau of Investigation, the Central Intelligence Agency, and other agencies

under section 4315(e). In order to clarify that OPM has broader duties beyond those of being an employer of its own employees, the Committee bill would insert the phrase “or the Office of Personnel Management” after the term “Federal executive agency” in sections 4322(e)(2), 4324(b)(1), and 4324(c)(2).

Section 410. Enforcement of rights with respect to a State or private employer

Section 4323(a)(2)(A) of title 38, United States Code, refers to a claimant’s “appl[ication] to the Secretary [of Labor] for assistance * * * under section 4322(c).” The provision under which such a complaint might be filed before the Department of Labor is section 4322(a), not section 4322(c). The Committee bill amends the citation to section 4322 in section 4323(a)(2)(A) accordingly. The same citation error appears in section 4324(b)(1). The Committee bill also corrects that erroneous citation.

Section 411. Enforcement of rights with respect to Federal executive agencies

As is explained above, the Committee bill deletes a reference from section 4324(a)(1) of title 38, United States Code, to “unsuccessful” efforts by the Secretary of Labor to resolve complaints; adds a reference in sections 4322(e)(2), 4324(b)(1), and 4324(c)(2) to the Office of Personnel Management; and corrects an erroneous citation to section 4322(c) in section 4324(b)(1). The Committee bill also makes a purely technical correction to section 4324(c)(2) by substituting the word “Office” for “employee”.

Section 412. Enforcement of rights with respect to certain Federal agencies

Section 4325(d)(1) of title 38, United States Code, currently allows a Federal employee to seek information from the Secretary of Labor concerning “alternative employment in the Federal government under this chapter * * *.”

The Secretary of Labor does not maintain information concerning alternative Federal employment. Therefore, the Committee bill would strike language directing Federal employees to that improper source of information.

The Committee bill also makes a purely technical correction to section 4325(d)(1) by substituting the term “employees” for “employee”.

Section 413. Conduct of investigation; subpoenas

Section 4326(a) of title 38, United States Code, currently authorizes the Secretary of Labor to have reasonable access to the documents of any person or employer during the course of investigations under section 4322(d). This section does not currently authorize the Secretary to have reasonable access to *persons* for purposes of gathering evidence and testimony during the investigation.

The Committee bill would rectify this oversight by adding such authority.

Section 414. Transition rules and effective dates

Section 8(a) of USERRA sets forth the rules of transition from prior veterans' reemployment laws to USERRA. Generally, the provisions of USERRA apply to reemployment applications initiated on or after December 12, 1994, and the provisions of prior law apply to reemployment applications initiated prior to December 12, 1994. Those rules apply regardless of when the uniformed service underlying the reemployment application began or ended.

The Committee has been informed that the above transition rules could work a hardship on persons training under orders issued pursuant to section 502(f) of title 32, United States Code, which provides the authority for the voluntary or involuntary activation of National Guard personnel, if that service exceeds the basic 5-year service limit imposed by section 4312(c) of USERRA. This possibility is especially troubling in light of the Supreme Court decision in *King v. St. Vincent's Hospital*, 502 U.S. 215 (1991), where the Court held that, under the prior law, there was no service limitation with respect to service performed under orders issued pursuant to 32 U.S.C. § 502(f).

The Committee bill would rectify the foregoing situation by providing that all service performed under orders issued pursuant to section 502(f) up to December 12, 1994, would be considered under the provisions of prior law for service limitation purposes, while all such service performed on or after December 12, 1994, would be considered under the provisions of USERRA, regardless of when the service began. Thus, for example, a service member who was ordered to active duty for training under orders issued pursuant to section 502(f) on January 15, 1990, and who was released from duty on January 30, 1996, would have the period January 15, 1990–December 11, 1994, considered under the service limitation provisions of prior law, while the period December 12, 1994–January 30, 1996, would be considered under the service limitation provisions of USERRA. The two time frames would then be combined to determine if the service limitations had been exceeded.

Section 8(c)(2) of USERRA provided that the provisions of section 4316 of title 38, United States Code relating to insurance coverage would apply to "a person on active duty * * *". Since the term "service in the uniformed service" applies to active duty service and other classes of service, the Committee bill would replace "active duty" with the phrase "person serving a period of service in the armed forces."

COST ESTIMATE

In compliance with paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the Committee, based on information supplied by the Congressional Budget Office (CBO), estimates that the costs resulting from the enactment of the Committee bill (as compared to costs under current law), as scored against the current CBO baseline during the remainder of FY 1996 and for the first 5 years following enactment, would have no effect on direct spending during fiscal years 1996 through 1998, and would decrease Federal direct spending by \$1 million during each year in fiscal years 1999 through 2002. The bill would not affect the budgets of State and

local governments. The cost estimate provided by CBO, setting forth a detailed breakdown of costs follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 1, 1996.

Hon. ALAN K. SIMPSON,
Chairman, Committee on Veterans' Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1711, the Veterans' Benefits Improvement Act of 1996, as ordered reported by the Senate Committee on Veterans' Affairs on July 24, 1996.

The bill would affect direct spending and thus would be subject to pay-as-you-go procedures under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL, *Director.*

Attachment.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1711.
2. Bill title: Veterans' Benefits Improvement Act of 1996.
3. Bill status: As ordered reported by the Senate Committee on Veterans' Affairs on July 24, 1996.
4. Bill purpose: This bill would alter certain veterans' benefits by limiting compensation for incarcerated veterans, extending authorities for certain educational and housing benefits, and authorizing appropriations for Homeless Veteran's Reintegration Projects.
5. Estimated cost to the Federal Government: The table below summarizes the budgetary effects of the bill. It shows the effects of the bill on direct spending and authorizations of appropriations.

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000	2001	2002
DIRECT SPENDING							
Proposed Changes:							
Estimated budget authority	0	0	0	-1	-1	-1	-1
Estimated outlays	0	0	0	-1	-1	-1	-1
SPENDING SUBJECT TO APPROPRIATIONS ACTION							
Proposed Changes:							
Estimated authorization level	0	12	11	0	0	0	0
Estimated outlays	0	3	8	9	3	0	0

The costs of the bill would fall under budget function 700, Veterans' Affairs.

6. Basis of estimate: The estimate assumes enactment of the bill by October 1, 1996, and appropriation of the authorized amounts for each fiscal year. CBO used historical spending rates for estimating outlays.

Direct spending

The bill contains several provisions that would affect direct spending.

Clothing Allowance for Incarcerated Veterans. Under current law, VA pays veterans with service-connected disabilities a clothing allowance to accommodate prosthetic devices and other medical needs. The average allowance in 1995 was \$490. Section 307 would reduce on a pro rata basis such payments to veterans who are incarcerated. Using recent incarceration rates for inmates of both federal and state prisons, CBO estimates that this provision could involve over 1,000 veterans and save about \$1 million a year as shown in the table below.

[By fiscal years, in millions of dollars]

	1996	1997	1998	1999	2000	2001	2002
DIRECT SPENDING							
Spending Under Current Law for Veterans Compensation:							
Estimated budget authority	14,979	15,211	15,511	15,805	16,067	16,335	16,606
Estimated outlays	13,794	15,222	15,451	15,780	17,198	5,161	16,583
Proposed Changes:							
Estimated budget authority	0	-1	-1	-1	-1	-1	-1
Estimated outlays	0	-1	-1	-1	-1	-1	-1
Spending Under the Bill:							
Estimated budget authority	14,979	15,210	15,510	15,804	16,066	16,334	16,605
Estimated Outlays	13,794	15,221	15,450	15,779	17,197	15,160	16,582

Alternative Teaching Certificate Program. Section 305 would extend VA's authority to pay Montgomery GI Bill benefits to veterans who train in state-approved certification programs from September 30, 1996, to December 31, 1998. Training usually occurs in one of three settings—universities, service centers, or school districts. This bill would provide benefits to students who train outside of a university setting.

CBO assumes that the number of people training in these programs will remain steady (about 380 per year), and that enrollment will continue to be evenly divided between university and other settings. Also, CBO assumes that participants would train for an average period of about 10 months. Based on a benefit rate for full-time students of about \$400 a month of training, the bill would increase costs by about \$1 million a year for 1998 and 1999. Because there would be no more than three months of training for a cohort in 2000, the budgetary impact in that year would be insignificant.

[By fiscal years, in millions of dollars]

	1996	1997	1998	1999	2000	2001	2002
DIRECT SPENDING							
Spending Under Current Law for the Montgomery GI Bill:							
Estimated budget authority	1,360	1,369	1,486	1,556	1,546	1,487	1,488
Estimated outlays	1,290	1,399	1,486	1,556	1,566	1,467	1,488
Proposed Changes:							
Estimated budget authority	0	1	1	(¹)	0	0	0
Estimated outlays	0	1	1	(¹)	0	0	0
Spending Under the Bill:							
Estimated budget authority	1,360	1,370	1,487	1,556	1,546	1,487	1,488
Estimated outlays	1,360	1,400	1,487	1,556	1,566	1,467	1,488

¹ Less than \$500,000.

Other Provisions. Several provisions would affect direct spending, but would not have a significant budgetary impact. Title II of the bill would alter certain veterans life insurance programs. Section 301 would start the Vietnam era on February 28, 1961, rather than August 4, 1964, and make a small number of veterans who served in the Vietnam theater of operations eligible for certain pension and compensation benefits at an insignificant cost. Sections 308 and 309 would address representation before the Board of Veterans Appeals and provision of copies of the Board's decisions. Sections 303 and 304 would clarify eligibility for burial benefits.

Spending subject to appropriations action

Two provisions would have measurable costs that would be subject to appropriations action. These provisions would authorize a commission on transitional assistance and appropriations for a job training program for homeless veterans.

Commission on Transitional Assistance. Section 105 would establish a commission to evaluate federal programs that assist members of the Armed Forces and veterans in readjusting to civilian life. CBO estimates that the cost for the commission would be about \$2 million in 1997 and \$1 million in 1998. These funds would be made available from amounts appropriated for the Department of Defense.

The commission would be composed of 12 members, who would be appointed within 90 days of the effective date of the bill. Each commissioner would be compensated at a rate equal to Level IV of the Executive Schedule. Also, the Chairman would be authorized to appoint an executive director whose rate of pay could not exceed Level V of the Executive Schedule.

Authority for the Homeless Veterans' Reintegration Projects. The bill would authorize appropriations for the Homeless Veterans Job Training Program. The provision specifies an authorization level of \$10 million a year for 1997 and 1998.

Other Provisions. Several provisions would affect authorization of appropriations, but would not have a significant budgetary impact. Section 302 would extend the termination date for the Advisory Committee on Minority Affairs by two years, from December 31, 1997, to December 31, 1999. Section 306 would authorize the Secretary of Veterans Affairs to refinance loans made under the Native American Veterans Direct Loan Program.

7. Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. The bill would have the following pay-as-you-go impact:

[By fiscal years, in millions of dollars]			
	1996	1997	1998
Change in outlays	0	0	0
Change in receipts		(¹)	

¹ Not applicable.

8. Estimated cost to State, local, and tribal governments: S. 1711 contains no intergovernmental mandates as defined in the Un-

funded Mandates Reform Act of 1995 (Public Law 104-4) and would have no effects on the budgets of state, local, or tribal governments.

9. Estimated impact on the private sector: This bill would impose no new federal private-sector mandates as defined in Public Law 104-4.

10. Previous CBO estimates: On May 9, 1996, CBO prepared estimates for H.R. 3373 and H.R. 2843, bills having provisions on veterans' insurance programs similar to the provisions in this bill. On February 6, 1996, CBO also prepared an estimate for H.R. 2850, which has the same effect as the provision in this bill that clarifies burial eligibility for minors. On June 21, 1996, CBO prepared a cost estimate for H.R. 3673, which contains a provision like section 307 in this bill that limits the clothing allowance for incarcerated veterans. H.R. 3763 also contains a provision to extend the authorization for homeless veterans reintegration projects for three years. On June 21, 1996, CBO prepared a cost estimate for H.R. 3674, which contains a provision to extend permanently education benefits for alternative teacher certificate programs. Section 305 of S. 1711 extends this program to December 31, 1998.

11. Estimate prepared by: Federal cost estimate: Mary Helen Petrus and Victoria Fraider. Impact on State, local, and tribal governments: Marc Nicole. Impact on the private sector: Ellen Breslin Davidson.

12. Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee on Veterans' Affairs has made an evaluation of the regulatory impact which would be incurred in carrying out the Committee bill. The Committee finds that the Committee bill would not entail any significant regulation of individuals or businesses or result in any significant impact on the personal privacy of any individuals, and that the paperwork resulting from enactment would be minimal.

TABULATION OF VOTES CAST IN COMMITTEE

In compliance with paragraph 7 of rule XXVI of the Standing Rules of the Senate, the following is a tabulation of votes cast in person or by proxy by members of the Committee on Veterans' Affairs at its July 24, 1996, meeting. On that date, the Committee, by unanimous voice vote, ordered S. 1711 reported favorably to the Senate.

AGENCY REPORTS

STATEMENT OF CHARLES L. CRAGIN, CHAIRMAN, BOARD OF
VETERANS' APPEALS, DEPARTMENT OF VETERANS AFFAIRS

Mr. Chairman and Members of the Committee:

I am pleased to be here today to present the views of the Department of Veterans Affairs (VA) on several bills. Those bills are:

* * * * *

S. 281, a bill to change the beginning date of the Vietnam era for veterans' benefits purposes;

S. 749, a bill to revise the authority relating to the VA Center for Minority Veterans and Center for Women Veterans;

* * * * *

S. 994, a bill to clarify the eligibility of certain minors for burial in national cemeteries;

S. 995, the "Veterans' Benefits Reform Act of 1995";

S. 996, the "Veterans' Insurance Reform Act of 1995";

* * * * *

S. 1342, a bill to authorize the Secretary of Veterans Affairs to make loans to refinance loans made to veterans under the Native American Veterans Direct Loan Program;

S. 1711, a bill to establish a commission to evaluate the programs of the Federal Government that assist members of the Armed Forces and veterans in readjusting to civilian life;

* * * * *

S. 1751, a bill to revise the procedure for providing claimants and their representatives with copies of Board of Veterans' Appeals decisions and to protect the right of claimants to appoint veterans service organizations as their representatives in claims before VA;

* * * * *

S. 281

Current 38 U.S.C. § 101(29) defines the term "Vietnam era" for purposes of veterans' benefits as the period beginning on August 5, 1964, and ending on May 7, 1975. S. 281 would change the beginning date of that period from August 5, 1964, to December 22, 1961.

Expansion of the Vietnam era as contemplated by S. 281 would make veterans separated from the service between December 22, 1961, and August 5, 1964, and their survivors, potentially eligible for veterans' benefits based on wartime service, regardless of whether the veterans actually served in Vietnam. The primary impact of the change would be to make veterans or their survivors potentially eligible for nonservice-connected disability and death pension benefits.

VA's preliminary estimates indicate that S. 281 would have significant paygo costs which would require offsets under the Budget Enforcement Act. We estimate the increased benefit cost of this measure would be \$87.2 million

in Fiscal Year 1997 and \$546.2 million for the five-year period Fiscal Year 1997 through Fiscal Year 2001. In addition, we estimate enactment of the bill would result in increased administrative costs of \$3.9 million over the five-year period Fiscal Year 1997 through Fiscal Year 2001. In view of these cost implications, we cannot support this bill.

S. 749

S. 749 would revise the statutory authority for VA's Center for Minority Veterans and Center for Women Veterans. It would make three changes.

First, the bill would permit the Director of the Center for Minority Veterans and the Director of the Center for Women Veterans to be career appointees in the Senior Executive Service (SES). Currently, these Directors may be only noncareer SES appointees. VA supports this change because it gives us greater flexibility in selecting those officials and potentially allows for greater continuity in the program.

Second, S. 749 would impose two new duties on the Director of the Center for Minority Veterans, thereby making that official's duties parallel with those of the Director of the Center for Women Veterans. It would require that the Director of the Center for Minority Veterans advise the Secretary on VA's efforts to have minority veterans included in clinical research and on medical knowledge that is or may be pertinent to minority veterans. It would also require the Director to provide support and administrative services to the Advisory Committee on Minority Veterans. VA has no objections to those changes.

Third, S. 749 would require the Advisory Committee on Women Veterans and the Advisory Committee on Minority Veterans to oversee the activities of the corresponding Center, to monitor and evaluate the Center's activities, and to report the results of this evaluation to the Secretary upon request. VA strongly opposes these amendments relating to the monitoring and evaluation of the Centers' activities and recommends that this section be deleted from the bill. To impose direct programmatic oversight duties would exceed the appropriate role of advisory committees. Already these external committees have general responsibility for annually reviewing and providing recommendations (to the Secretary) on issues and VA programs and policies affecting the relevant veteran populations.

The bill would also extend the requirement to have an Advisory Committee on Minority Veterans through December 31, 1999. VA supports this provision.

* * * * *

S. 994

Among those persons eligible under 38 U.S.C. § 2402 for burial in a national cemetery are the minor children of veterans and certain other persons eligible for burial in a na-

tional cemetery. The statute does not define the term "minor child."

When Congress enacted the National Cemeteries Act of 1973, transferring from the Department of the Army to VA the responsibility for operating national cemeteries, it reenacted without change the prior title 24 provisions regarding eligibility for burial. The Department of the Army, in exercising its authority, had interpreted title 24's "minor child" provision as including children under the age of 21 years. Because Congress indicated an intent that similar eligibility rules should apply under VA's management of the National Cemetery System, VA's regulation at 38 C.F.R. § 1.620(g) governing burial eligibility generally defines a minor child as being under 21 years of age. In keeping with the general definition of a "child" for title 38 purposes, the age limit is 23 years if the individual was pursuing a course of instruction at an approved educational institution.

This situation occasionally causes confusion, since the general title 38 definition of "child" is in one significant respect more restrictive than the regulatory definition of "minor child" for purposes of burial eligibility. Under 38 U.S.C. § 101(4), an individual is generally not considered a "child" after reaching age 18 unless, as indicated above, the individual is pursuing an education. We believe that Congress did not intend to restrict burial eligibility in this manner. Accordingly, we have proposed that the statute governing burial eligibility be amended to incorporate the regulatory definition of "minor child."

Because enactment of our proposal would only technically clarify the law as it is currently being applied, there would be no attendant costs or savings. We therefore support enactment of S. 994.

S. 995

S. 995, the "Veterans' Benefits Reform Act of 1995," is a VA proposal to restrict payment of the clothing allowance in the case of incarcerated veterans and to create for pension purposes a presumption of permanent and total disability for veterans over age 65 who are patients in a nursing home.

Section 2 of the bill would amend chapter 53 of title 38, United States Code, to restrict the payment of a clothing allowance to incarcerated veterans who are furnished clothing without charge by a penal institution. Under 38 U.S.C. § 1162, VA is required to pay a clothing allowance to each veteran who, because of a service-connected disability, wears or uses a prosthetic or orthopedic appliance which tends to wear out or tear the veteran's clothing, or who uses medication prescribed for a skin condition which is due to a service-connected disability and which irreparably damages the veteran's outer garments. Although 38 U.S.C. § 5313 limits payment of compensation to certain incarcerated veterans, that statute does not restrict pay-

ment of the clothing allowance to them, even though they generally do not pay for their institutional clothing.

A clothing allowance for incarcerated veterans is unnecessary where they receive institutional clothing at no personal expense. We therefore support legislation to prohibit payment of the clothing allowance to veterans who are incarcerated in excess of 60 days and are furnished clothing without charge by the institution in which they are incarcerated. Under this bill, the annual award would be reduced on a pro rata basis for each day of incarceration. This provision would reduce direct spending by less than \$500,000 annually.

Section 3 of S. 995 would amend 38 U.S.C. § 1502(a) to create a presumption of permanent and total disability for pension purposes for veterans 65 years of age or older who are patients in a nursing home. Section 8002 of the Omnibus Budget Reconciliation Act of 1990, 104 Stat. 1388–342, eliminated the presumption of total disability for pension purposes for persons 65 years of age and older. As a result, a VA rating board currently must evaluate disability before pension can be paid to any veteran, regardless of age or physical condition.

Enactment of this bill would reduce the time necessary to process disability-pension claims because, once a veteran's age and status as a nursing-home patient are confirmed, it would no longer be necessary to develop and evaluate medical evidence regarding the veteran's disability.

Enactment of S. 995 would not affect the integrity of VA's pension program because an individual 65 years old who is a patient of a nursing home would almost certainly meet the current requirements of section 1502(a), which provides that a person is considered to be permanently and totally disabled if he or she is unemployable as a result of disability reasonably certain to continue throughout the life of the disabled person or suffers from a disease or disorder which justifies a determination of permanent, total disability. In addition, VA could adopt procedures to re-evaluate entitlement to pension if a notice of discharge is received from a veteran whose pension is based on age and confinement in a nursing home.

Enactment of this bill would result in estimated annual administrative cost savings in excess of \$300,000 over the next five fiscal years. We support enactment of this bill.

S. 996

S. 996, the "Veterans' Insurance Reform Act of 1995," is another VA proposal. It would change the name of the Servicemen's Group Life Insurance (SGLI) program to Servicemembers' Group Life Insurance, merge the Retired Reservist SGLI program into the Veterans' Group Life Insurance (VGLI) program, extend VGLI coverage to members of the Ready Reserve of a uniformed service who separate with less than 20 years of service, permit an insured

to convert a VGLI policy to an individual policy of life insurance with a commercial insurance company at any time, and permit an insured to convert a SGLI policy to an individual policy of life insurance with a commercial company upon separation from service. We support enactment of this bill.

Section 2 of S. 996 would amend title 38, United States Code, to change the name of the Servicemen's Group Life Insurance program to Servicemembers' Group Life Insurance to reflect gender neutrality.

Section 3 of the bill would merge the existing Retired Reservist SGLI program into the VGLI program. Currently, when members of the Ready Reserve retire with 20 years of service or are transferred to the Retired Reserve under the temporary special retirement authority provided in 10 U.S.C. § 1331a, they may continue their SGLI coverage as Retired Reservist SGLI until they receive their retired pay or reach age 61, whichever comes first. Members of the Ready Reserve who retire with 20 years of service also have the option to convert their SGLI policy to a commercial life insurance policy. Section 3 of S. 996 would discontinue the Retired Reservist SGLI program and instead place the insured Retired Reservists in the VGLI program. This change would benefit Retired Reservists by making available the lifetime coverage provided under the VGLI program, by giving them a discount when premiums are paid annually, by allowing them a longer reinstatement period (five years instead of three years), by permitting them to convert their coverage to commercial policies, and by allowing them to pay their premiums by allotment from their retired pay.

We recognize that Retired Reservists who are over 44 years of age would have to pay increased premiums for the lifetime VGLI coverage. For example, the monthly premium for \$100,000 of SGLI coverage for Retired Reservists who are age 50–54 is currently \$56, and the monthly premium for \$100,000 of VGLI coverage for Retired Reservists who are age 50–54 would be \$65. However, the SGLI Retired Reserve premium rates are currently insufficient to cover the cost of death claims in the program. The actuarial staffs of both VA and the primary insurer have agreed that these premium rates should be increased to the level of VGLI premium rates as of July 1, 1996. This increase would reduce the subsidy required for the SGLI Retired Reservist program from the parent SGLI program. Therefore, even without enactment of this bill, the SGLI Retired Reservist premium rates will be increased to the same level as the VGLI rates. Enactment of S. 996 would not adversely affect any other insured member or the SGLI or VGLI program and would involve no cost to the Government.

Section 3 would also extend the benefit of VGLI lifetime coverage to members of the Ready Reserve of a uniformed service, whom the Department of Defense considers more

important than ever to our national security. When the Veterans' Insurance Act of 1974 was enacted, Congress stated that members of the Ready Reserve who separate with less than 20 years of service would not be eligible to convert their SGLI coverage to VGLI, unless they are disabled and uninsurable at the time of release. This bill would involve no cost to the Government, and it would not adversely affect the SGLI or VGLI program.

Section 4 of the bill would expand the opportunities of SGLI and VGLI insureds to convert their coverage to commercial life insurance. VGLI coverage is provided under a five-year, level-premium, term plan that is renewable every five years for life. Premiums are based on the insured's age at the time of issue or renewal and are increased accordingly at the beginning of each five-year renewal period. Although term policies provide low-cost coverage for younger insureds, term insurance becomes very expensive for older insureds. Under the current law, VGLI insureds have the option of converting their VGLI coverage to permanent life coverage with a commercial insurance company at the end of each five-year term period. A permanent life insurance policy, which provides coverage at a level premium throughout the premium-paying period of the policy, is an alternative to the ever-increasing cost of term coverage. Since the cost of the converted policy increases as the insured's age increases, requiring insureds to delay conversion until the end of the five-year period increases the cost. For example, if a VGLI insured converts his or her policy at age 41, the monthly premium for \$100,000 of whole life coverage would be \$170. However, under S. 996, if the insured were allowed to convert at age 36, rather than waiting until the end of the five-year renewal period, the premium would be \$133.

For the same reason, S. 996 would also extend this conversion privilege to SGLI insureds at the time of their separation from service. Currently, SGLI insureds must first convert to VGLI and thereafter can convert their VGLI policy to a commercial permanent life policy at the end of their five-year VGLI period. This wait increases the cost of conversion to a commercial life policy as discussed above.

Expansion of the conversion privilege would increase the life insurance options of our insured veterans and lower their cost of conversion to a commercial permanent life policy. We do not anticipate a negative effect on the SGLI or VGLI program or any cost to the Government if this bill is enacted.

* * * * *

S. 1342

S. 1342 would amend the VA pilot program for direct loans to Native American veterans living on trust land. Under this bill, VA would be authorized to refinance a loan

previously made to a Native American veteran under this program with a new loan at a lower interest rate.

VA supports the concept of this bill. The pilot program was intended to give Native American veterans living on trust land the same access to VA housing benefits as other veterans. This amendment would extend the important interest-rate-reduction refinancing loan benefit to these veterans.

VA has two technical concerns regarding this bill. First, VA does not believe that Native American veterans should be able to request a refinancing loan every time interest rates drop slightly. Under the guaranteed loan program, the cost of refinancing a loan effectively limits such refinancings to situations where interest rates have significantly decreased (normally 2 percentage points). Since loans made by VA under the pilot program are not likely to involve the same closing costs as guaranteed loans made by private lenders, VA believes the bill should limit a veteran to one refinancing loan. In the alternative, VA would propose that the new loan must bear an interest rate that is at least 2 percent per annum lower than the interest rate of the loan being refinanced.

Our second concern relates to entitlement. Under the guaranteed loan program, a veteran may obtain an interest-rate-reduction refinancing loan even though he or she has no loan entitlement available for use (having exhausted the entitlement to obtain the first loan). As written, the bill would not permit a Native American veteran to obtain an interest-rate-reduction refinancing loan unless the veteran had sufficient loan entitlement available for use. That would be unlikely in most cases. Accordingly, we suggest that "paragraph (3)" on lines 12 and 16 of page 2 of the bill be revised to read "paragraphs (2) and (3)".

Additional housing loan items

VA would urge the Committee to favorably consider two additional housing loan items. First, as part of the Re-invention of Government initiative, VA recommended legislation to permit VA to contract competitively for servicing of its loan portfolio. Our proposal is contained in section 203 of S. 1345. VA believes it is in the best interests of the Government to contract out this function. Several provisions of existing law, however, preclude VA from privatizing this function in the most effective manner. Although this will have a paygo cost of about \$4 million a year, we expect this to be offset by FTE reductions and other discretionary savings of around \$8 million a year. It makes good management sense, and we urge the enactment of our proposal.

Second, Public Law No. 104-110 extended the sunset for VA's enhanced vendee loan sales under 38 U.S.C. § 3720(h) until only December 31, 1996. VA's experience is that the private securities market where VA must sell its loans prefers a guaranty on the certificates issued by the trust in

addition to a guaranty on the underlying loans. This enhancement gives VA the best return without significantly changing VA's exposure to loss. Accordingly, we urge that this authority be made permanent.

Permanent extension of this authority would have a paygo saving of about \$5 million per year.

S. 1711

S. 1711 would establish a 12-member Commission on Service Members and Veterans Transition Assistance funded by the Department of Defense to review programs designed to assist members of the Armed Forces in making the transition to civilian life, evaluate proposals for improving those programs, and make recommendations to Congress to enhance the value and ensure the continued use of those programs. The objective of S. 1711 in establishing this Commission is commendable. However, since the primary responsibility for supporting the Commission will be with the Department of Defense, VA defers to that department in this matter.

* * * * *

S. 1751

S. 1751 would amend title 38, United States Code, to revise the procedures for providing claimants and their representatives with copies of Board decisions and to protect the right of claimants to appoint veterans service organizations as their representatives in claims before VA. This legislation would permit the Board to provide copies of its appellate decisions to claimants' representatives reasonably and efficiently. It would also permit VA to continue a longstanding method of claimant representation which has proven efficient and beneficial to claimants.

Section 7104(e) of title 38, United States Code, specifies that "the Board shall promptly mail a copy of its written decision to the claimant and the claimant's authorized representative (if any)." In the past, the Board's method of "mailing" a copy of a decision to a representative depended on where the representative was located. For a representative at the Board's offices in Washington, D.C., a contractor hand-delivered the Board decision to the representative. For a representative at a VA regional office, the Board gave the decision to the contractor, who "bundled" mail for the 58 VA regional offices and delivered the bundles to the United States Postal Service. After the United States Postal Service delivered the bundles to the VA regional offices, each regional office sorted its bundled mail and distributed any Board decision to the appropriate representative at that regional office. For a representative not at an office at a VA facility, the Board mailed its decision directly to the representative.

This past practice made sense considering the number of Board decisions and the number of representatives who

have offices at VA facilities. The Board decides more than 30,000 cases per year. In more than 85 percent of those cases, one of the various veterans service organizations represents the claimant. Often, as authorized by 38 U.S.C. § 5902(a)(2), the service organization occupies free office space in either a VA regional office or at the Board's offices in Washington, D.C. Thus, the Board's past practice of distributing decisions to representatives was flexible and efficient.

This past practice, however, was invalidated by the Court of Veterans Appeals. In *Trammell v. Brown*, 6 Vet. App. 181 (1994), the Court of Veterans Appeals held that an apparently late notice of appeal was timely filed because the Board's decision-distribution procedure did not accord with 38 U.S.C. § 7104(e). In *Davis v. Brown*, 7 Vet. App. 298 (1995), the court held that the phrase "the Board shall promptly mail" in section 7104(e) means that the Board decision "must be correctly addressed, stamped with the proper postage, and delivered directly by the [Board] into the custody of the U.S. Postal Service." *Id.* at 303. The court then concluded that the apparently late notice of appeal in *Davis* was timely filed. *Id.* at 304.

The court's interpretation of section 7104(e) disrupts logistical approaches the Board has developed over the years to provide representatives with copies of its decisions. Indeed, it leads to some absurd results. For example, instead of a Board employee (or a contractor) simply walking down the hall to deliver a Board decision to a service organization representative on the same floor, now the employee, not a contractor, must place the decision in an envelope, affix proper postage, and deliver it directly into the United States Postal Service's custody. We understand that the Postal Service takes this mail to Maryland for sorting, then returns it to the District of Columbia for delivery. The Postal Service delivers VA mail to the VA building across the street from the Board's offices, where a contractor sorts it for internal delivery. The contractor must then carry the Board decision across the street to the building housing the Board and the service organization representative and deliver it to the representative.

The Board should be permitted to provide representatives with copies of its decisions in a sensible manner. Thus, we proposed this legislation to permit the Board to "send" its decisions to claimants and their representatives by any means reasonably calculated to provide them with a copy of the decision within the same time a copy of the decision sent by first-class mail would be expected to reach them.

Section 1(b) of S. 1751 would also make a corresponding change to 38 U.S.C. § 7266(a)(1), which currently provides that, to obtain review by the Court of Veterans Appeals, a person adversely affected by a final Board decision must file a notice of appeal within 120 days after the date on which notice of the decision is mailed pursuant to section

7104(e). Our proposed amendment would require that a notice of appeal be filed within 120 days after the date on which notice of the Board decision is sent pursuant to section 7104(e) to the representative or, if none, to the claimant.

Current law authorizes the Secretary to recognize individuals to prepare, present, and prosecute claims for VA benefits on behalf of claimants. Section 5904(a) of title 38, United States Code, authorizes the Secretary to recognize any individual as an agent or attorney for the preparation, presentation, and prosecution of VA benefit claims. Section 5903 of title 38, United States Code, authorizes the Secretary to recognize any individual for the preparation, presentation, and prosecution of any particular VA benefit claim. In addition, section 5902(a)(1) of title 38, United States Code, authorizes the Secretary to recognize representatives of certain veterans service organizations in the preparation, presentation, and prosecution of VA benefit claims.

With respect to representatives of veterans service organizations, VA's policy and practice has been to recognize any accredited representative of an approved service organization if a claimant files a power of attorney in favor of the organization itself, a specific office of the organization, or a particular representative of the organization. This practice affords several advantages. First, it allows different representatives of an organization to handle a particular claim at different stages of the claim, without the claimant having to file a separate power of attorney for each representative. For example, a representative of an organization at a VA field office can prosecute a claim there and initiate an appeal. Another representative of the same organization at the organization's national office can then argue the claim on appeal before the Board in Washington, D.C. Second, it allows different representatives of the organization to handle a particular claim at different locations and times, without the claimant having to file another power of attorney. For example, if a claimant moves from New York to Los Angeles while his or her claim is pending, a representative of an organization at a local office in New York can initially handle the claim there, and another representative of the organization at a local office in Los Angeles can subsequently pursue the claim at that location. Similarly, a second representative of an organization can assume responsibility for the prosecution of a claim if the original representative of that organization moves, becomes incapacitated, or leaves the organization. Third, the practice allows VA to notify a claimant's representative in a manner best suited to assure notice is received. For example, the Board can send a copy of its decision to a representative of a given organization in Washington, D.C., as well as to a local representative at a field station, thereby doubling the likelihood that the claimant's representative will actually receive notice.

Cases recently decided by the Court of Veterans Appeals are imperiling VA's longstanding practice of recognizing any accredited representative of a veterans service organization in a particular claim. In *Leo v. Brown*, 8 Vet. App. 410 (1995), the court again held that an apparently late notice of appeal was timely filed because the Board's decision-distribution procedure did not accord with 38 U.S.C. § 7104(e). In that case, the claimant executed a power-of-attorney form in which, in the space for designation of a representative, he entered the American Legion and the address of the Greenville, South Carolina, Veterans Affairs Office, where the American Legion had a local representative. The Greenville office stated that it had no record of having received a copy of the Board's decision on the veteran's claim. The court ruled that actual receipt of a copy of the decision by the American Legion's national office in Washington, D.C. did not cure the failure to mail a copy to the claimant's designated representative, "i.e., the Greenville, South Carolina, office."

We are concerned that the court may go further and hold that, based on the plain meaning of 38 U.S.C. § 5902(a)(1), a claimant may appoint only an individual, not an organization, to prepare, present, and prosecute a claim before VA on the claimant's behalf. Such a holding would play havoc with the traditional role of veterans service organizations in the claim process and inject additional technical demands into that process. If a claimant could appoint only an individual, the claimant would have to file another power of attorney each time it became necessary or expedient for another accredited representative to assist with his or her claim. VA could not allow another representative of the same organization access to the claimant's files or mail another representative a copy of a Board decision without risking violation of the Privacy Act. Under the *Leo* decision, similar problems would frequently arise in the cases of claimants who designate a particular office of an organization on their power-of-attorney forms.

A recent survey at the Board showed that 79 percent of appellants who designated a veterans service organization on their power-of-attorney form (which, as noted above, occurs in more than 85 percent of the 30,000 cases that pass through the Board each year) designated only the organization, not a specific office or an individual representative of the organization. Thus, if the court were to invalidate VA's practice of recognizing organizations rather than individuals, it would cast doubt on the validity and meaning of more than 25,000 powers of attorney in cases coming before the Board alone over one year. It would delay decisions on numerous claims while VA tried to clarify which individual representative, if any, each appellant wanted to represent him or her.

The impact on the Veterans Benefits Administration (VBA) would be even greater. In 1994, VBA completed action on 2,127,265 compensation and pension claims. As of

December 31, 1994, national veterans service organizations represented approximately 36 percent of the beneficiaries receiving monthly VA compensation or pension payments. It would be fair to conclude that veterans service organizations represented approximately 36 percent of the compensation or pension claimants whose cases were handled in 1994. Although VBA does not have statistics on the number of claimants who designate only an organization (as opposed to a specific office or recognized representative of an organization), let us assume that, as at the Board, approximately 79 percent of claimants represented by service organizations designated only an organization on their powers of attorney. Thus, an “individuals only” holding by the court would cast doubt on the validity and meaning of nearly 605,000 powers of attorney coming before VBA during one year.

An “individuals only” rule would require extensive and costly reprogramming of VBA’s automated data processing system and greatly increase VBA’s annual postage costs. In connection with claim development, award notification, and routine communications concerning awards, VBA’s regional offices annually produce more than 3 million letters for veterans service organizations representing claimants or beneficiaries. Currently, the Hines, Illinois computer center prepares and mails one copy of each letter to the claimant or beneficiary and ships three copies to the appropriate regional office, where one copy is filed in the claim folder and two are delivered through internal mail to the organization. If required to notify individual representatives of organizations by mail, VBA would have to reprogram the computer system and, most likely, mail the representatives’ copies from Hines. Postage costs alone could approach \$1 million annually. We think that such a procedure would waste limited resources, particularly since the current procedure provides an efficient means of notifying organizations.

An “individuals only” rule would also probably force VBA to curtail or eliminate veterans service organizations’ access to veterans’ computer records. Currently, an accredited representative of an organization may access the records of any veteran represented by that organization. Under an “individuals only” system, however, VBA would have to restrict a representative’s access to only the files of those veterans whose powers of attorney designate that representative. The cost of establishing appropriate security for the computer files in a system that includes over 6,000 individual representatives would probably be too great to justify continued access to the records. The Board would also face a similar problem with access it provides veterans service organizations to its computer records.

Section 2 of S. 1751, which we developed after consulting with officials of the major veterans service organizations, would address these problems. Section 2(a) would amend section 5902 of title 38, United States Code, to authorize

the Secretary to treat a power of attorney naming an organization, a specific office of an organization, or a recognized representative of an organization as an appointment of the entire organization, unless the claimant specifically indicated his or her desire to appoint only a recognized representative of the organization. Under this amendment, whether a claimant's power of attorney is executed in favor of an approved organization, a local office of that organization, or an individual representative of the organization, the claimant could rest assured of the assistance of an accredited representative of the organization at every stage of the claim or appeal before VA, regardless of location or the inability of a particular individual to continue representation, without having to file additional powers of attorney.

Section 2(a) of S. 1751 would also require the Secretary, when required or permitted to notify a claimant's representative, and when the claimant has appointed a veterans service organization as representative, to notify the organization at the address designated by the organization for the purpose of receiving each kind of notification, unless the claimant specifically indicates a desire to appoint only an individual representative of the organization.

Under section 2(b) of S. 1751, the amendments made by section 2(a) would apply to any power-of-attorney form filed with VA regardless of the date of its execution.

We estimate minor administrative savings from enactment of the provision authorizing the sending of Board decisions, and depending on how the Court of Veterans Appeals interprets current 38 U.S.C. § 5902(a), enactment of the provision regarding the appointment of veterans service organizations as claimants' representatives would likely afford significant cost avoidance. We strongly support enactment of this bill.

* * * * *

This concludes my statement, Mr. Chairman. I would be pleased to answer any questions that you or the members of the Committee may have.

CHANGES IN EXISTING LAW MADE BY S. 1711 AS REPORTED

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the Committee bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

* * * * *

PART I—GENERAL PROVISIONS

CHAPTER 1—GENERAL

§ 101. Definitions

For the purposes of this title—

(1) * * *

* * * * *

(29) [The term “Vietnam era” means the period beginning August 5, 1964, and ending on May 7, 1975.] *The term “Vietnam era” means the following:*

(A) *The period beginning on February 28, 1961, and ending on May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during such period.*

(B) *The period beginning on August 5, 1964, and ending on May 7, 1975, in all other cases.—*

* * * * *

CHAPTER 3—DEPARTMENT OF VETERANS AFFAIRS

* * * * *

§ 317. Center for Minority Veterans

(a) * * *

(b) The Director shall be a career or noncareer appointee in the Senior Executive Service. The Director shall be appointed for a term of six years.

(c) * * *

(d) The Director shall perform the following functions with respect to veterans who are minorities:

(1) * * *

* * * * *

(10) *Advise the Secretary and other appropriate officials on the effectiveness of the Department’s efforts to accomplish the goals of section 492B of the Public Health Service Act (42 U.S.C. 289a–2) with respect to the inclusion of minorities in clinical research and on particular health conditions affecting the health of members of minority groups which should be studied as part of the Department’s medical research program and promote cooperation between the Department and other sponsors of medical research of potential benefit to veterans who are minorities.*

(11) *Provide support and administrative services to the Advisory Committee on Minority Veterans provided for under section 544 of this title.*

[(10)] (12) Perform such other duties consistent with this section as the Secretary shall prescribe.

(e) * * *

* * * * *

(g) *In this section—*

(1) *The term “veterans who are minorities” means veterans who are minority group members.*

(2) *The term “minority group member” has the meaning given such term in section 544(d) of this title.*

§ 318. Center for Women Veterans

(a) * * *

(b) The Director shall be a career or noncareer appointee in the Senior Executive Service. The Director shall be appointed for a term of six years.

* * *

(d) * * *

* * *

(10) Advise the Secretary and other appropriate officials on the effectiveness of the Department’s efforts to accomplish the goals of section 492B of the Public Health Service Act [(relating to the inclusion of women and minorities in clinical research) and of] (42 U.S.C. 289a–2) *with respect to the inclusion of women in clinical research and on* particular health conditions affecting women’s health which should be studied as part of the Department’s medical research program and promote co-operation between the Department and other sponsors of medical research of potential benefit to veterans who are women.

* * *

CHAPTER 5—AUTHORITY AND DUTIES OF THE SECRETARY

* * *

Subchapter III—Advisory Committees

* * *

§ 542. Advisory Committee on Women Veterans

(a)(1) * * *

* * *

(b) The Secretary shall, on a regular basis, consult with and seek the advice of the Committee with respect to the administration of benefits by the Department for women veterans, reports and studies pertaining to women veterans and the needs of women veterans with respect to compensation, health care, rehabilitation, outreach, and other benefits and programs administered by the Department, *including the Center for Women Veterans.*

* * *

§ 544. Advisory Committee on Minority Veterans

(a)(1) * * *

* * *

(b) The Secretary shall, on a regular basis, consult with and seek the advice of the Committee with respect to the administration of benefits by the Department for veterans who are minority group members, reports and studies pertaining to such veterans and the needs of such veterans with respect to compensation, health care,

rehabilitation, outreach, and other benefits and programs administered by the Department, *including the Center for Minority Veterans*.

(c)(1) * * *

* * * * *

(e) The Committee shall cease to exist **[December 31, 1997]** *December 31, 1999*.

* * * * *

PART II—GENERAL BENEFITS

* * * * *

CHAPTER 11—COMPENSATION FOR SERVICE-CONNECTED DISABILITY OR DEATH

* * * * *

Subchapter II—Wartime Disability Compensation

* * * * *

§ 1116. Presumptions of service connection for diseases associated with exposure to certain herbicide agents

(a)(1) For the purposes of section 1110 of this title, and subject to section 1113 of this title—

(A) a disease specified in paragraph (2) of this subsection becoming manifest as specified in that paragraph in a veteran who, during active military, naval, or air service, served in the Republic of Vietnam **[during the Vietnam era]** *during the period beginning on January 9, 1962, and ending on May 7, 1975*; and

(B) each additional disease (if any) that (i) the Secretary determines in regulations prescribed under this section warrants a presumption of service-connection by reason of having positive association with exposure to an herbicide agent, and (ii) becomes manifest within the period (if any) prescribed in such regulations in a veteran who, during active military, naval, or air service, served in the Republic of Vietnam **[during the Vietnam era]** *during the period beginning on January 9, 1962, and ending on May 7, 1975*, and while so serving was exposed to that herbicide agent,

shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of evidence of such disease during the period of such service.

(2) The diseases referred to in paragraph (1)(A) of this subsection are the following:

(A) * * *

* * * * *

(C) Chloracne or another acneform disease consistent with chloracne becoming manifest to a degree of disability of 10 percent or more within one year after the last date on which the veteran performed active military, naval, or air service in the Republic of Vietnam **[during the Vietnam era]** *during the pe-*

riod beginning on January 9, 1962, and ending on May 7, 1975.

(D) * * *

(E) Porphyria cutanea tarda becoming manifest to a degree of disability of 10 percent or more within a year after the last date on which the veteran performed active military, naval, or air service in the Republic of Vietnam **[during the Vietnam era]** *during the period beginning on January 9, 1962, and ending on May 7, 1975.*

(F) Respiratory cancers (cancer of the lung, bronchus, larynx, or trachea) becoming manifest to a degree of 10 percent or more within 30 years after the last date on which the veteran performed active military, naval, or air service in the Republic of Vietnam **[during the Vietnam era]** *during the period beginning on January 9, 1962, and ending on May 7, 1975.*

(G) * * *

(3) For the purposes of this subsection, a veteran who, during active military, naval, or air service, served in the Republic of Vietnam **[during the Vietnam era]** *during the period beginning on January 9, 1962, and ending on May 7, 1975,* and has a disease referred to in paragraph (1)(B) of this subsection shall be presumed to have been exposed during such service to an herbicide agent containing dioxin or 2,4-dichlorophenoxyacetic acid, and may be presumed to have been exposed during such service to any other chemical compound in an herbicide agent, unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service.

(4) For purposes of this section, the term “herbicide agent” means a chemical in an herbicide used in support of the United States and allied military operations in the Republic of Vietnam **[during the Vietnam era]** *during the period beginning on January 9, 1962, and ending on May 7, 1975.*

* * * * *

CHAPTER 13—DEPENDENCY AND INDEMNITY COMPENSATION FOR SERVICE-CONNECTED DEATHS

* * * * *

Subchapter II—Dependency and Indemnity Compensation

§ 1315. Dependency and indemnity compensation to parents

(a)(1) * * *

* * * * *

(f)(1) In determining income under this section, all payments of any kind or from any source shall be included, except—

(A) * * *

* * * * *

(F) payments under policies of **[servicemen’s group life insurance]** *servicemembers’ group life insurance*, United States Government life insurance or national service life insurance, and payments of servicemen’s indemnity;

* * * * *

**CHAPTER 17—HOSPITAL, NURSING HOME,
DOMICILIARY, AND MEDICAL CARE**

* * * * *

**Subchapter II—Hospital, Nursing Home, or Domiciliary
Care and Medical Treatment**

* * * * *

§ 1710. Eligibility for hospital, nursing home, and domiciliary care

(a)(1) * * *

* * * * *

(e)(1)(A) Subject to paragraphs (2) and (3) of this subsection, a veteran—

(i) who served on active duty in the Republic of Vietnam **【during the Vietnam era,】** during the period beginning on January 9, 1962, and ending on May 7, 1975, and

(ii) who the Secretary finds may have been exposed during such service to dioxin or was exposed during such service to a toxic substance found in a herbicide or defoliant used in connection with military purposes during **【such era】** *such period*, is eligible for hospital care and nursing home care under subsection (a)(1)(G) of this section for any disability, notwithstanding that there is insufficient medical evidence to conclude that such disability may be associated with such exposure.

(B) * * *

* * * * *

CHAPTER 19—INSURANCE

Subchapter I—National Service Life Insurance

Sec.

1901. * * *

* * * * *

**Subchapter III—[Servicemen's Group Life Insurance]
*Servicemembers' Group Life Insurance***

1965. * * *

* * * * *

1974. Advisory Council on **【Servicemen's Group Life Insurance】** *Servicemembers' Group Life Insurance.*

* * * * *

**Subchapter III—[Servicemen's Group Life Insurance]
*Servicemembers' Group Life Insurance***

* * * * *

§ 1965. Definitions

For the purpose of this subchapter—

(1) * * *

* * * * *

(5) The term “member” means—

(A) * * *

(B) a person who volunteers for assignment to the Ready Reserve of a uniformed service and is assigned to a unit or position in which such person may be required to perform active duty, or active duty for training, and each year will be scheduled to perform at least twelve periods of inactive duty training that is creditable for retirement purposes under chapter 1223 of title 10 (or under chapter 67 of that title as in effect before the effective date of the Reserve Officer Personnel Management Act); *and*

[(C) a person assigned to, or who upon application would be eligible for assignment to, the Retired Reserve of a uniformed service who has not received the first increment of retirement pay or has not yet reached sixty-one years of age and has completed at least twenty years of satisfactory service creditable for retirement purposes under chapter 1223 of title 10 (or under chapter 67 of that title as in effect before the effective date of the Reserve Officer Personnel Management Act);

[(D) a person transferred to the Retired Reserve of a uniformed service under the temporary special retirement authority provided in section 1331a of title 10 who has not received the first increment of retirement pay or has not reached sixty-one years of age; *and*]

[(E)] (C) a member, cadet, or midshipman of the Reserve Officers Training Corps while attending field training or practice cruises.

* * * * *

§ 1967. Persons insured; amount

(a) Any policy of insurance purchased by the Secretary under section 1966 of this title shall automatically insure against death—

(1) any member of a uniformed service on active duty, active duty for training, or inactive duty training scheduled in advance by competent authority; *and*

(2) * * *

[(3) any member assigned to, or who upon application would be eligible for assignment to, the Retired Reserve of a uniformed service who meets the qualifications set forth in section 1965(5)(C) of this title; *and*

[(4) any member assigned to the Retired Reserve of a uniform service who meets the qualifications set forth in section 1965(5)(D) of this title;]

in the amount of \$100,000, unless such member elects in writing (A) not to be insured under this subchapter, or (B) to be insured in an amount less than \$100,000 that is evenly divisible by \$10,000. The insurance shall be effective the first day of active duty or active duty for training, or the beginning of a period of inactive duty training scheduled in advance by competent authority, [or the first day a member of the Ready Reserve meets the quali-

fications set forth in section 1965(5)(B) of this title, or the first day a member of the Reserves, whether or not assigned to the Retired Reserve of a uniformed service, meets the qualifications of section 1965(5)(C) of this title, or the first day a member of the Reserves meets the qualifications of section 1965(5)(D) of this title,] or the date certified by the Secretary to the Secretary concerned as the date [Servicemen's Group Life Insurance] *Servicemembers' Group Life Insurance* under this subchapter for the class or group concerned takes effect, whichever is the later date.

(b) * * *

(c) If any member elects not to be insured under this subchapter or to be insured in any amount less than \$100,000, such member may thereafter be insured under this subchapter in the amount of \$100,000 or any lesser amount evenly divisible by \$10,000 upon written application, proof of good health, and compliance with such other terms and conditions as may be prescribed by the Secretary. Any former member insured under Veterans' Group Life Insurance who again becomes eligible for [Servicemen's Group Life Insurance] *Servicemembers' Group Life Insurance* and declines such coverage solely for the purpose of maintaining such member's Veterans' Group Life Insurance in effect shall upon termination of coverage under Veterans' Group Life Insurance be automatically insured under [Servicemen's Group Life Insurance] *Servicemembers' Group Life Insurance*, if otherwise eligible therefor.

[(d) Notwithstanding any other provision of this section, any member who on May 1, 1991 is a member of the Retired Reserve of a uniformed service (or who upon application would be eligible for assignment to the Retired Reserve of a uniformed service) may obtain increased insurance coverage in the amount of \$100,000 or any lesser amount evenly divisible by \$10,000 if—

[(1) the member—

[(A) is insured under this subchapter on May 1, 1991;

or

[(B) within one year after May 1, 1991, reinstates insurance under this subchapter that had lapsed for nonpayment of premiums; and

[(2) the member submits a written application for the increased coverage to the office established pursuant to section 1966(b) of this title within one year after May 1, 1991.]

[(e)] (d) In addition to the amounts of insurance otherwise provided under this section, an eligible member may, upon application, obtain increased coverage beyond that provided under this section in the amount of \$100,000, or any lesser amount evenly divisible by \$10,000.

§ 1968. Duration and termination of coverage; conversion

(a) Each policy purchased under this subchapter shall contain a provision, in terms approved by the Secretary, to the effect that any insurance thereunder on any member of the uniformed services, unless discontinued or reduced upon the written request of the insured, shall continue in effect while the member is on active duty, active duty for training, or inactive duty training scheduled in advance by competent authority during the period thereof, or while the member meets the qualifications set forth in [subpara-

graph (B), (C), or (D) of section 1965(5)] *section 1965(5)(B)* of this title, and such insurance shall cease—

(1) * * *

* * * * *

[(4) with respect to a member of the Ready Reserve of a uniformed service who meets the qualifications set forth in section 1965(5)(B) of this title, one hundred and twenty days after separation or release from such assignment—

[(A) unless on the date of such separation or release the member is totally disabled, under criteria established by the Secretary, in which event the insurance shall cease one year after the date of separation or release from such assignment, or on the date the insured ceases to be totally disabled, whichever is the earlier date, but in no event prior to the expiration of one hundred and twenty days after separation or release from such assignment;

[(B) unless on the date of such separation or release the member has completed at least twenty years of satisfactory service creditable for retirement purposes under chapter 1223 of title 10 (or under chapter 67 of that title as in effect before the effective date of the Reserve Officer Personnel Management Act) and would upon application be eligible for assignment to or is assigned to the Retired Reserve, in which event the insurance, unless converted to an individual policy under terms and conditions set forth in section 1977(e) of this title, shall, upon timely payment of premiums under terms prescribed by the Secretary directly to the administrative office established under section 1966(b) of this title, continue in force until receipt of the first increment of retirement pay by the member or the member's sixty-first birthday, whichever occurs earlier; or

[(C) unless on the date of such separation or release the member is transferred to the Retired Reserve of a uniformed service under the temporary special retirement authority provided in section 1331a of title 10, in which event the insurance, unless converted to an individual policy under terms and conditions set forth in section 1977(e) of this title, shall, upon timely payment of premiums under terms prescribed by the Secretary directly to the administrative office established under section 1966(b) of this title, continue in force until receipt of the first increment of retirement pay by the member or the member's sixty-first birthday, whichever occurs earlier.]

(4) with respect to a member of the Ready Reserve of a uniformed service who meets the qualifications set forth in section 1965(5)(B) of this title, one hundred and twenty days after separation or release from such assignment, unless on the date of such separation or release the member is totally disabled, under criteria established by the Secretary, in which event the insurance shall cease one year after the date of separation or release from such assignment, or on the date the insured ceases to be totally disabled, whichever is the earlier date, but in no event prior to the expiration of one hundred and twenty days after separation or release from such assignment.

[(5) with respect to a member of the Retired Reserve who meets the qualifications of section 1965(5)(C) of this title, and who was assigned to the Retired Reserve prior to the date insurance under the amendment made by section 5(a) of the Veterans' Insurance Act of 1974 (Public Law 93-289, 88 Stat. 166) is placed in effect for members of the Retired Reserve, at such time as the member receives the first increment of retirement pay, or the member's sixty-first birthday, whichever occurs earlier, subject to the timely payment of the initial and subsequent premiums, under terms prescribed by the Secretary, directly to the administrative office established under section 1966(b) of this title.

[(6) with respect to a member of the Retired Reserve who meets the qualifications of section 1965(5)(D) of this title, at such time as the member receives the first increment of retirement pay, or the member's sixty-first birthday, whichever occurs earlier, subject to the timely payment of the initial and subsequent premiums, under terms prescribed by the Secretary, directly to the administrative office established under section 1966(b) of this title.]

[(b) Each policy purchased under this subchapter shall contain a provision, in terms approved by the Secretary, that, except as hereinafter provided, Servicemen's Group Life Insurance which is continued in force after expiration of the period of duty or travel under section 1967(b) or 1968(a) of this title, effective the day after the date such insurance would cease, shall be automatically converted to Veterans' Group Life Insurance subject to (1) the timely payment of the initial premium under terms prescribed by the Secretary, and (2) the terms and conditions set forth in section 1977 of this title. Such automatic conversion shall be effective only in the case of an otherwise eligible member or former member who is separated or released from a period of active duty or active duty for training or inactive duty training on or after the date on which the Veterans' Group Life Insurance program (provided for under section 1977 of this title) becomes effective. Servicemen's Group Life Insurance continued in force under section 1968(a) (4)(B) or (5) of this title shall not be converted to Veterans' Group Life Insurance. However, a member whose insurance could be continued in force under section 1968(a)(4)(B) of this title, but is not so continued, may, effective the day after the insurance otherwise would cease, convert such insurance to an individual policy under the terms and conditions set forth in section 1977(e) of this title.]

(b)(1) Each policy purchased under this subchapter shall contain a provision, in terms approved by the Secretary, that, except as hereinafter provided, Servicemembers' Group Life Insurance which is continued in force after expiration of the period of duty or travel under section 1967(b) or 1968(a) of this title, effective the day after the date such insurance would cease, shall, at the election of the member or former member concerned—

(A) be automatically converted to Veterans' Group Life Insurance subject to (i) the timely payment of the initial premium under terms prescribed by the Secretary, and (ii) the terms and conditions set forth in section 1977 of this title; or

(B) be converted to an individual policy of insurance as described in section 1977(e) of this title upon written application for conversion made to the participating company selected by the member and payment of the required premiums.

(2) Automatic conversion under paragraph (1)(A) shall be effective only in the case of an otherwise eligible member or former member who is separated or released from a period of active duty or active duty for training or inactive duty training on or after the date on which the Veterans' Group Life Insurance program (provided for under section 1977 of this title) becomes effective.

§ 1969. Deductions; payment; investment; expenses

(a)(1) During any period in which a member, on active duty or active duty for training under a call or order to such duty that does not specify a period of less than thirty-one days, is insured under **[Servicemen's Group Life Insurance]** *Servicemen's Group Life Insurance*, there shall be deducted each month from the member's basic or other pay until separation or release from such duty an amount determined by the Secretary (which shall be the same for all such members) as the share of the cost attributable to insuring such member under such policy, less any costs traceable to the extra hazard of such duty in the uniformed service.

(2) During any month in which a member is assigned to the Ready Reserve of a uniformed service under conditions which meet the qualifications of section 1965(5)(B) of this title, **[is assigned to the Reserve (other than the Retired Reserve) and meets the qualifications of section 1965(5)(C) of this title, or is assigned to the Retired Reserve and meets the qualifications of section 1965(5)(D) of this title,]** and is insured under a policy of insurance purchased by the Secretary, under section 1966 of this title, there shall be contributed from the appropriation made for active duty pay of the uniformed service concerned an amount determined by the Secretary (which shall be the same for all such members) as the share of the cost attributable to insuring such member under this policy, less any costs traceable to the extra hazards of such duty in the uniformed services. Any amounts so contributed on behalf of any individual shall be collected by the Secretary concerned from such individual (by deduction from pay or otherwise) and shall be credited to the appropriation from which such contribution was made.

(3) * * *

(4) Any amount not deducted from the basic or other pay of a member insured under **[Servicemen's Group Life Insurance]** *Servicemen's Group Life Insurance*, or collected from the member by the Secretary concerned, if not otherwise paid, shall be deducted from the proceeds of any insurance thereafter payable. The initial monthly amount under paragraph (1) or (2) hereof, or fiscal year amount under paragraph (3) hereof, determined by the Secretary to be charged under this section for **[Servicemen's Group Life Insurance]** *Servicemen's Group Life Insurance* may be continued from year to year, except that the Secretary may redetermine such monthly or fiscal year amounts from time to time in accordance with experience. No refunds will be made to any member of any amount properly deducted from the member's basic or other pay, or collected from the member by the Secretary concerned, to

cover the insurance granted under **【Servicemen's Group Life Insurance】** *Servicemembers' Group Life Insurance*.

(b) For each month for which any member is so insured, there shall be contributed from the appropriation made for active duty pay of the uniformed service concerned an amount determined by the Secretary and certified to the Secretary concerned to be the cost of Servicemen's Group Life Insurance which is traceable to the extra hazard of duty in the uniformed services. Effective January 1, 1970, such cost shall be determined by the Secretary on the basis of the excess mortality incurred by members and former members of the uniformed services insured under **【Servicemen's Group Life Insurance】** *Servicemembers' Group Life Insurance* above what their mortality would have been under peacetime conditions as such mortality is determined by the Secretary using such methods and data as the Secretary shall determine to be reasonable and practicable. The Secretary is authorized to make such adjustments regarding contributions from pay appropriations as may be indicated from actual experience.

(c) An amount equal to the first amount due on **【Servicemen's Group Life Insurance】** *Servicemembers' Group Life Insurance* may be advanced from current appropriations for active-service pay to any such member, which amount shall constitute a lien upon any service or other pay accruing to the person from whom such advance was made and shall be collected therefrom if not otherwise paid. No disbursing or certifying officer shall be responsible for any loss incurred by reason of such advance.

(d)(1) The sums withheld from the basic or other pay of members, or collected from them by the Secretary concerned, under subsection (a) of this section, and the sums contributed from appropriations under subsection (b) of this section, together with the income derived from any dividends or premium rate adjustments received from insurers shall be deposited to the credit of a revolving fund established in the Treasury of the United States. All premium payments and extra hazard costs on **【Servicemen's Group Life Insurance】** *Servicemembers' Group Life Insurance* and the administrative cost to the Department of insurance issued under this subchapter shall be paid from the revolving fund.

* * * * *

【(e) The premiums for Servicemen's Group Life Insurance placed in effect or continued in force for a member assigned to the Retired Reserve of a uniformed service who meets the qualifications of subparagraph (C) or (D) of section 1965(5) of this title, shall be established under the criteria set forth in subsections (a) and (c) of section 1971 of this title, except that the Secretary may provide for average premiums for such various age groupings as the Secretary may determine to be necessary according to sound actuarial principles, and shall include an amount necessary to cover the administrative cost of such insurance to the company or companies issuing or continuing such insurance. Such premiums shall be payable by the insureds thereunder as provided by the Secretary directly to the administrative office established for such insurance under section 1966(b) of this title. The provisions of subsections (d) and (e) of section 1971 of this title shall be applicable to Servicemen's Group Life Insurance continued in force or issued to a member as-

signed to the Retired Reserve of a uniformed service. However, a separate accounting may be required by the Secretary for insurance issued to or continued in force on the lives of members assigned to the Retired Reserve and for other insurance in force under this subchapter. In such accounting, the Secretary is authorized to allocate claims and other costs among such programs of insurance according to accepted actuarial principles.】

【(f)】 (e) The Secretary of Defense shall prescribe regulations for the administration of the functions of the Secretaries of the military departments under this section. Such regulations shall prescribe such procedures as the Secretary of Defense, after consultation with the Secretary, may consider necessary to ensure that such functions are carried out in a timely and complete manner and in accordance with the provisions of this section, including specifically the provisions of subsection (a)(2) of this section relating to contributions from appropriations made for active duty pay.

【(g)】 (f)(1) No tax, fee, or other monetary payment may be imposed or collected by any State, or by any political subdivision or other governmental authority of a State, on or with respect to any premium paid under an insurance policy purchased under this subchapter.

(2) * * *

§ 1970. Beneficiaries; payment of insurance

(a) Any amount of insurance under this subchapter in force on any member or former member on the date of the insured's death shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date of the insured's death, in the following order of precedence:

First, to the beneficiary or beneficiaries as the member or former member may have designated by a writing received prior to death (1) in the uniformed services if insured under 【Servicemen's Group Life Insurance】 *Servicemembers' Group Life Insurance*, or (2) in the administrative office established under section 1966(b) of this title if separated or released from service, or if assigned to the Retired Reserve, and insured under 【Servicemen's Group Life Insurance】 *Servicemembers' Group Life Insurance*, or if insured under Veterans' Group Life Insurance;

Second, if there be no such beneficiary, to the widow or widower of such member or former member;

Third, if none of the above, to the child or children of such member or former member and descendants of deceased children by representation;

Fourth, if none of the above, to the parents of such member or former member or the survivor of them;

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of such member or former member;

Sixth, if none of the above, to other next of kin of such member or former member entitled under the laws of domicile of such member or former member at the time of the insured's death.

* * * * *

(f) Notwithstanding the provisions of any other law, payment of matured 【Servicemen's Group Life Insurance】 *Servicemembers'*

Group Life Insurance or Veterans' Group Life Insurance benefits may be made directly to a minor widow or widower on his or her own behalf, and payment in such case shall be a complete acquittance to the insurer.

(g) Payments of benefits due or to become due under **【Servicemen's Group Life Insurance】** *Servicemembers' Group Life Insurance* or Veterans' Group Life Insurance made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to (1) collection of amounts not deducted from the member's pay, or collected from him by the Secretary concerned under section 1969(a) of this title, (2) levy under subchapter D of chapter 64 of the Internal Revenue Code of 1986 (26 U.S.C. 6331 et seq.) (relating to the seizure of property for collection of taxes), and (3) the taxation of any property purchased in part or wholly out of such payments.

* * * * *

§ 1971. Basic tables of premiums; readjustment of rates

(a) * * *

(b) The total premiums for **【Servicemen's Group Life Insurance】** *Servicemembers' Group Life Insurance* shall be the sum of the amounts computed according to the provisions of subsection (a) above and the estimated cost traceable to the extra hazard of active duty in the uniformed services as determined by the Secretary, subject to the provision that such estimated costs traceable to the extra hazard shall be retroactively readjusted annually in accordance with section 1969(b).

* * * * *

§ 1973. Forfeiture

Any person guilty of mutiny, treason, spying, or desertion, or who, because of conscientious objections, refuses to perform service in the Armed Forces of the United States or refuses to wear the uniform of such force, shall forfeit all rights to **【Servicemen's Group Life Insurance】** *Servicemembers' Group Life Insurance* under this subchapter. No such insurance shall be payable for death inflicted as a lawful punishment for crime or for military or naval offense, except when inflicted by an enemy of the United States.

§ 1974. Advisory Council on **【Servicemen's Group Life Insurance】 *Servicemembers' Group Life Insurance***

(a) There is an Advisory Council on **【Servicemen's Group Life Insurance】** *Servicemembers' Group Life Insurance*. The council consists of—

* * * * *

§ 1977. Veterans' Group Life Insurance

(a) Veterans' Group Life Insurance shall be issued in the amounts specified in section 1967(a) ~~and (e)~~ of this title. In the case of any individual, the amount of Veterans' Group Life Insurance may not exceed the amount of ~~Service~~*Members' Group Life Insurance* coverage continued in force after the expiration of the period of duty or travel under section 1967(b) ~~and (e)~~ or 1968(a) of this title. No person may carry a combined amount of ~~Service~~*Members' Group Life Insurance* and Veterans' Group Life Insurance in excess of \$200,000 at any one time. ~~Any person insured under Veterans' Group Life Insurance who again becomes insured under Service~~*Members' Group Life Insurance may within 60 days after becoming so insured convert any or all of such person's Veterans' Group Life Insurance to an individual policy of insurance under subsection (e). However, if such a person dies within the 60-day period and before converting such person's Veterans' Group Life Insurance, Veterans' Group Life Insurance will be payable only if such person is insured for less than \$200,000 under Service*Members' Group Life Insurance, and then only in an amount which when added to the amount of *Service*Members' Group Life Insurance payable shall not exceed \$200,000. ~~If any person insured under Veterans' Group Life Insurance again becomes insured under Service~~*Members' Group Life Insurance but dies before terminating or converting such person's Veterans' Group Life Insurance to Service*Members' Group Life Insurance, Veterans' Group Life Insurance will be payable only if such person is insured for less than \$200,000 under *Service*Members' Group Life Insurance, and then only in an amount which when added to the amount of *Service*Members' Group Life Insurance payable shall not exceed \$200,000.

(b) * * *

* * * * *

(d) Any amount of Veterans' Group Life Insurance in force on any person on the date of such person's death shall be paid, upon the establishment of a valid claim therefor, pursuant to the provisions of section 1970 of this title. However, any designation of beneficiary or beneficiaries for ~~Service~~*Members' Group Life Insurance* filed with a uniformed service until changed, shall be considered a designation of beneficiary or beneficiaries for Veterans' Group Life Insurance, but not for more than sixty days after the effective date of the insured's Veterans' Group Insurance, unless at the end of such sixty-day period, the insured is incompetent in which event such designation may continue in force until the disability is removed but not for more than five years after the effective date of the insured's Veterans' Group Life Insurance. Except as indicated above in incompetent cases, after such sixty-day period, any designation of beneficiary or beneficiaries for Veterans' Group Life Insurance to be effective must be by a writing signed by the insured and received by the administrative office established under section 1966(b) of this title.

(e) An insured under Veterans' Group Life Insurance shall have the right to convert such insurance to an individual policy of life insurance upon written application for conversion made to the par-

ticipating company the insured selects and payment of the required premiums. The individual policy will be issued without medical examination on a plan then currently written by such company which does not provide for the payment of any sum less than the face value thereof or for the payment of an additional amount as premiums in the event the insured performs active duty, active duty for training, or inactive duty training. [The individual policy will be effective the day after the insured's Veterans' Group Life Insurance terminates by expiration of the five-year term period, except in a case where the insured is eligible to convert at an earlier date by reason of again having become insured under Servicemen's Group Life Insurance, in which event the effective date of the individual policy may not be later than the sixty-first day after the insured again became so insured.] *A Veterans' Group Life Insurance policy converted to an individual policy under this subsection shall terminate on the date before the date on which the individual policy becomes effective.* Upon request to the administrative office established under section 1966(b) of this title, an insured under Veterans' Group Life Insurance shall be furnished a list of life insurance companies participating in the program established under this subchapter. In addition to the life insurance companies participating in the program established under this subchapter, the list furnished to an insured under this section shall include additional life insurance companies (not so participating) which meet qualifying criteria, terms, and conditions established by the Secretary and agree to sell insurance to former members in accordance with the provisions of this section.

(f) * * *

(g) Any person whose [Servicemen's Group Life Insurance] *Servicemembers' Group Life Insurance* was continued in force after termination of duty or discharge from service under the law as in effect prior to the date on which the Veterans' Group Life Insurance program (provided for under section 1977 of this title) became effective, and whose coverage under [Servicemen's Group Life Insurance] *Servicemembers' Group Life Insurance* terminated less than four years prior to such date, shall be eligible within one year from the effective date of the Veterans' Group Life Insurance program to apply for and be granted Veterans' Group Life Insurance in an amount equal to the amount of the insured's Servicemen's Group Life Insurance which was not converted to an individual policy under prior law. Veterans' Group Life Insurance issued under this subsection shall be issued for a term period equal to five years, less the time elapsing between the termination of the applicant's [Servicemen's Group Life Insurance] *Servicemembers' Group Life Insurance* and the effective date on which the Veterans' Group Life Insurance program became effective. Veterans' Group Life Insurance under this subsection shall only be issued upon application to the administrative office established under section 1966(b) of this title, payment of the required premium, and proof of good health satisfactory to that office, which proof shall be submitted at the applicant's own expense. Any person who cannot meet the good health requirements for insurance under this subsection solely because of a service-connected disability shall have such disability waived. For each month for which any eligible veteran, whose serv-

ice-connected disabilities are waived, is insured under this subsection there shall be contributed to the insurer or insurers issuing the policy or policies from the appropriation “Compensation and Pensions, Department of Veterans Affairs” an amount necessary to cover the cost of the insurance in excess of the premiums established for eligible veterans, including the cost of the excess mortality attributable to such veteran’s service-connected disabilities. The Secretary may establish, as the Secretary may determine to be necessary according to sound actuarial principles, a separate premium, age groupings for premium purposes, accounting, and reserves, for persons granted insurance under this subsection different from those established for other persons granted insurance under this section. Appropriations to carry out the purpose of this section are hereby authorized.

* * * * *

CHAPTER 23—BURIAL BENEFITS

Sec.

2301. * * *

* * * * *

306. Headstones, markers, and [grave liners] *burial receptacles*

* * * * *

§ 2306. Headstones, Markers, and [grave liners] *burial receptacles*

(a) * * *

* * * * *

(d)(1) The Secretary of Veterans Affairs shall provide [a grave liner] *an outer burial receptacle* for each new grave in an open cemetery within the National Cemetery System in which remains are interred in a casket. The Secretary of the Army may provide [a grave liner] *an outer burial receptacle* for such a grave in the Arlington National Cemetery.

(2) The use of [grave liners] *outer burial receptacles* in a cemetery within the National Cemetery System or in the Arlington National Cemetery shall be in accordance with [specifications and procedures] *regulations or procedures* approved by the Secretary of Veterans Affairs or Secretary of the Army, respectively.

(3) *Regulations or procedures under paragraph (2) may specify that—*

(A) *an outer burial receptacle other than a grave liner be provided in lieu of a grave liner at the election of the survivors of the interred veteran; and*

(B) *if an outer burial receptacle other than a grave liner is provided in lieu of a grave liner upon an election of such survivors, such survivors be required—*

(i) *to pay the amount by which the cost of the outer burial receptacle exceeds the cost of the grave liner that would otherwise have been provided in the absence of the election; and*

(ii) *to pay the amount of the administrative costs incurred by the Secretary concerned in providing the outer burial receptacle in lieu of such grave liner.*

(4) *Regulations or procedures under paragraph (2) may provide for the use of a voucher system, or other system of reimbursement approved by the Secretary concerned, for payment for outer burial receptacles other than grave liners provided under such regulations or procedures.*

* * * * *

CHAPTER 24—NATIONAL CEMETERIES AND MEMORIALS

§ 2402. Persons eligible for interment in national cemeteries

Under such regulations as the Secretary may prescribe and subject to the provisions of section 6105 of this title, the remains of the following persons may be buried in any open national cemetery in the National Cemetery System:

(1) * * *

* * * * *

(5) The spouse, surviving spouse (which for purposes of this chapter includes an unremarried surviving spouse who had a subsequent remarriage which was terminated by death or divorce), minor child (*which for purposes of this chapter includes a child under 21 years of age, or under 23 years of age if pursuing a course of instruction at an approved educational institution*), and, in the discretion of the Secretary, unmarried adult child of any of the persons listed in paragraphs (1) through (4) and paragraph (7).

* * * * *

PART III—READJUSTMENT AND RELATED BENEFITS

CHAPTER 30—ALL-VOLUNTEER FORCE EDUCATIONAL ASSISTANCE PROGRAM

* * * * *

Subchapter II—Basic Educational Assistance

* * * * *

§ 3017. Death benefit

(a)(1) In the event of the service-connected death of any individual—

(A) * * *

* * * * *

(2)(A) The payment referred to in paragraph (1) of this subsection shall be made to the person or persons first listed below who is surviving on the date of such individual's death:

(i) The beneficiary or beneficiaries designated by such individual under the individual's **【Servicemen's Group Life Insurance】** *Servicemembers' Group Life Insurance* policy.

* * * * *

CHAPTER 32—POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE

* * * * *

Subchapter II—Eligibility; Contributions; and Matching Fund

* * * * *

§ 3224. Death of participant

In the event of a participant's death, the amount of such participant's unused contributions to the fund shall be paid to the living person or persons first listed below:

(1) The beneficiary or beneficiaries designated by such participant under such participant's **【Servicemen's Group Life Insurance】** *Servicemembers' Group Life Insurance* policy.

* * * * *

CHAPTER 34—VETERANS' EDUCATIONAL ASSISTANCE

Subchapter I—Purpose; Definitions

* * * * *

§ 3452. Definitions

For the purposes of this chapter and chapter 36 of this title—

(a)(1) * * *

* * * * *

(c) The term “educational institution” means any public or private elementary school, secondary school, vocational school, correspondence school, business school, junior college, teachers' college, college, normal school, professional school, university, or scientific or technical institution, or other institution furnishing education for adults. For the period ending on **【September 30, 1996】** *December 31, 1998*, such term includes any entity that provides training required for completion of any State-approved alternative teacher certification program (as determined by the Secretary).

* * * * *

CHAPTER 37—HOUSING AND SMALL BUSINESS LOANS

* * * * *

Subchapter III—Administrative Provisions

* * * * *

§ 3729. Loan fee

(a)(1) * * *

(2) Except as provided in paragraphs (4) and (5) of this subsection, the amount of such fee shall be 1.25 percent of the total loan amount, except that—

(A) * * *

* * * * *

(E) in the case of a loan guaranteed under section 3710(a)(8), 3710(a)(9)(B)(i), 3710(a)(11), **[or 3712(a)(1)(F)]** *3712(a)(1)(F)*, or 3762(h) of this title, the amount of such fee shall be 0.5 percent of the total loan amount.

* * * * *

Subchapter V—Native American Veteran Housing Loan Pilot Program

* * * * *

§ 3762. Direct housing loans to Native American veterans

(a) * * *

* * * * *

(h)(1) The Secretary may make direct loans to Native American veterans in order to enable such veterans to refinance existing loans made under this section.

(2)(A) The Secretary may not make a loan under this subsection unless the loan meets the requirements set forth in subparagraphs (B), (C), and (E) of paragraph (1) of section 3710(e) of this title.

(B) The Secretary may not make a loan under this subsection unless the loan will bear an interest rate at least one percentage point less than the interest rate borne by the loan being refinanced.

(C) Paragraphs (2) and (3) of such section 3710(e) shall apply to any loan made under this subsection, except that for the purposes of this subsection the reference to subsection (a)(8) of section 3710 of this title in such paragraphs (2) and (3) shall be deemed to be a reference to this subsection.

[(h)] *(i) The Secretary shall carry out an outreach program to inform and educate tribal organizations and Native American veterans of the pilot program provided for under this subchapter and the availability of direct housing loans for Native American veterans who live on trust lands.*

* * * * *

CHAPTER 43—EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES

Subchapter I—General

§ 4301. Purposes; sense of Congress

(a) The purposes of this chapter are—

(1) * * *

(2) to minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers, their fellow employees, and their communities, by providing for the prompt reemployment of such persons upon

their completion of such service [under honorable conditions];
and

* * * * *

§ 4303. Definitions

For the purposes of this chapter—

(1) * * *

* * * * *

(16) The term “uniformed services” means the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or *national* emergency.

* * * * *

Subchapter II—Employment and Reemployment Rights and Limitations; Prohibitions

§ 4311. Discrimination against persons who serve in the uniformed services and acts of reprisal prohibited

(a) * * *

[(b) An employer shall be considered to have denied a person initial employment, reemployment, retention in employment, promotion, or a benefit of employment in violation of this section if the person’s membership, application for membership, service, application for service, or obligation for service in the uniformed services is a motivating factor in the employer’s action, unless the employer can prove that the action would have been taken in the absence of such membership, application for membership, performance of service, application for service, or obligation.]

[(c)(1) An employer may not discriminate in employment against or take any adverse employment action against any person because such person has taken an action to enforce a protection afforded any person under this chapter, has testified or otherwise made a statement in or in connection with any proceeding under this chapter, has assisted or otherwise participated in an investigation under this chapter, or has exercised a right provided for in this chapter.]

[(2) The prohibition in paragraph (1) shall apply with respect to a person regardless of whether that person has performed service in the uniformed services and shall apply to any position of employment, including a position that is described in section 4312(d)(1)(C).]

(b) An employer may not discriminate in employment against or take any adverse employment action against any person because such person (1) has taken an action to enforce a protection afforded any person under this chapter, (2) has testified or otherwise made a statement in or in connection with any proceeding under this chapter, (3) has assisted or otherwise participated in an investigation under this chapter, or (4) has exercised a right provided for in this chapter. This subsection shall apply with respect to a person re-

ardless of whether the person has performed service in the uniformed services.

(c) An employer shall be considered to have engaged in actions prohibited—

(1) under subsection (a), if the person's membership, application for membership, service, application for service, or obligation for service in the uniformed services is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such membership, application for membership, service, application for service, or obligation for service; or

(2) under subsection (b), if the person's (A) action to enforce a protection afforded any person under this chapter, (B) testimony or making of a statement in or in connection with any proceeding under this chapter, (C) assistance or other participation in an investigation under this chapter, or (D) exercise of a right provided for in this chapter, is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such person's enforcement action, testimony, statement, assistance, participation, or exercise of a right.

(d) The prohibitions in subsections (a) and (b) shall apply to any position of employment, including a position covered by section 4312(d)(1)(C).

§ 4312. Reemployment rights of persons who serve in the uniformed services

(a) Subject to subsections (b), (c), and (d) and to section 4304, any person [who is absent from a position of employment] whose absence from a position of employment is necessitated by reason of service in the uniformed services shall be entitled to the reemployment rights and benefits and other employment benefits of this chapter if—

(b) * * *

(c) Subsection (a) shall apply to a person who is absent from a position of employment by reason of service in the uniformed services if such person's cumulative period of service in the uniformed services, with respect to the employer relationship for which a person seeks reemployment, does not exceed five years, except that any such period of service shall not include any service—

(1) * * *

* * * * *

(3) performed as required pursuant to [section 270] section 10147 of title 10, under section 502(a) or 503 of title 32, or to fulfill additional training requirements determined and certified in writing by the Secretary concerned, to be necessary for professional development, or for completion of skill training or retraining; or

(4) performed by a member of a uniformed service who is—

(A) ordered to or retained on active duty under [section 672(a), 672(g), 673, 673b, 673c, or 688] section 688, 12301(a), 12301(g), 12302, 12304, or 12305 of title 10 or under section 331, 332, 359, 360, 367, or 712 of title 14;

(B) **ordered to or retained on active duty (other than for training) under any provision of law during a war or during a national emergency declared by the President or the Congress;** *ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;*

(C) **ordered to active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under [section 673b] section 12304 of title 10;**

(D) * * *

(E) **called into Federal service as a member of the National Guard under chapter 15 of title 10 or under [section 3500 or 8500] section 12406 of title 10.**

(d)(1) * * *

(2) **In any proceeding involving an issue of whether—**

(A) * * *

* * * * *

(C) **the employment referred to in paragraph (1)(C) [is brief or for a nonrecurrent period and without a reasonable expectation] is for a brief, nonrecurrent period and there is no reasonable expectation** that such employment will continue indefinitely or for a significant period,

the employer shall have the burden of proving the impossibility or unreasonableness, undue hardship, or the brief or nonrecurrent nature of the employment without a reasonable expectation of continuing indefinitely or for a significant period.

§ 4313. Reemployment positions

(a) Subject to subsection (b) (in the case of any employee) and sections 4314 and 4315 (in the case of an employee of the Federal Government), a person entitled to reemployment under section 4312, upon completion of a period of service in the uniformed services, shall be promptly reemployed in a position of employment in accordance with the following order of priority:

(1) * * *

* * * * *

(4) In the case of a person who (A) is not qualified to be employed in (i) the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, or (ii) in the position of employment in which such person was employed on the date of the commencement of the service in the **[uniform services] uniformed services** for any reason (other than disability incurred in, or aggravated during, service in the uniformed services), and (B) cannot become qualified with reasonable efforts by the employer, in any other position of **[lesser status and pay which] which is the nearest approximation to a position referred to first in clause**

(A)(i) and then in clause (A)(ii) which such person is qualified to perform, with full seniority.

* * * * *

§ 4316. Rights, benefits, and obligations of persons absent from employment for service in a uniformed service

(a) * * *

* * * * *

(d) Any person whose employment with an employer is interrupted by a period of service in the uniformed services shall be permitted, upon request of that person, to use during such period of service any vacation, annual, or similar leave with pay accrued by the person before the commencement of such service. *No employer may require any such person to use vacation, annual, or similar leave during such period of service.*

§ 4317. Health plans

[(a)(1)(A)] Subject to paragraphs (2) and (3), in **(a)(1)** *In any case in which a person (or the person's dependents) has coverage under a health plan in connection with the person's position of employment, including a group health plan (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974), and such person is absent from such position of employment by reason of service in the uniformed services, the plan shall provide that the person may elect to continue such coverage as provided in this subsection. The maximum period of coverage of a person and the person's dependents under such an election shall be the lesser of—*

[(i)] *(A) the 18-month period beginning on the date on which the person's absence begins; or*

[(ii)] *(B) the day after the date on which the person fails to apply for or return to a position of employment, as determined under section 4312(e).*

[(B)] (2) A person who elects to continue health-plan coverage under this paragraph may be required to pay not more than 102 percent of the full premium under the plan (determined in the same manner as the applicable premium under section 4980B(f)(4) of the Internal Revenue Code of 1986) associated with such coverage for the employer's other employees, except that in the case of a person who performs service in the uniformed services for less than 31 days, such person may not be required to pay more than the employee share, if any, for such coverage.

[(C)] (3) In the case of a health plan that is a multiemployer plan, as defined in section 3(37) of the Employee Retirement Income Security Act of 1974, any liability under the plan for employer contributions and benefits arising under this paragraph shall be allocated—

[(i)] (A) by the plan in such manner as the plan sponsor shall provide; or

[(ii)] (B) if the sponsor does not provide—

[(I)] (i) to the last employer employing the person before the period served by the person in the uniformed services, or

[(II)] (ii) if such last employer is no longer functional, to the plan.

§ 4318. Employee pension benefit plans

(a)(1)(A) * * *

(b)(1) * * *

(2) A person reemployed under this chapter shall be entitled to accrued benefits pursuant to subsection (a) that are contingent on the making of, or derived from, employee contributions or elective deferrals (as defined in section 402(g)(3) of the Internal Revenue Code of 1986) only to the extent the person makes payment to the plan with respect to such contributions or deferrals. No such payment may exceed the amount the person would have been permitted or required to contribute had the person remained continuously employed by the employer throughout the period of service described in subsection (a)(2)(B). Any payment to the plan described in this paragraph shall be made during the period beginning with the date of reemployment and whose duration is three times the period of the person's service in the uniformed [services,] *services, such payment period* not to exceed five years.

* * * * *

Subchapter III—Procedures for Assistance, Enforcement, and Investigation

* * * * *

§ 4322. Enforcement of employment or reemployment rights

(a) * * *

* * * * *

(d) The Secretary shall investigate each complaint submitted pursuant to subsection (a). If the Secretary determines as a result of the investigation that the action alleged in such complaint occurred, the Secretary shall *attempt* to resolve the complaint by making reasonable efforts to ensure that the person or entity named in the complaint complies with the provisions of this chapter.

(e) If the efforts of the Secretary [with respect to a complaint under subsection (d) are unsuccessful,] *with respect to any complaint filed under subsection (a) do not resolve the complaint*, the Secretary shall notify the person who submitted the complaint of—

(1) * * *

(2) the complainant's entitlement to proceed under the enforcement of rights provisions provided under section 4323 (in the case of a person submitting a complaint against a State or private employer) or section 4324 (in the case of a person submitting a complaint against a Federal executive agency *or the Office of Personnel Management*).

* * * * *

§ 4323. Enforcement of rights with respect to a State or private employer

(a)(1) A person who receives from the Secretary a notification pursuant to section 4322(e) [of an unsuccessful effort to resolve a complaint] relating to a State (as an employer) or a private employer may request that the Secretary refer the complaint to the Attorney General. If the Attorney General is reasonably satisfied that the person on whose behalf the complaint is referred is entitled to the rights or benefits sought, the Attorney General may appear on behalf of, and act as attorney for, the person on whose behalf the complaint is submitted and commence an action for appropriate relief for such person in an appropriate United States district court.

(2) A person may commence an action for relief with respect to a complaint if that person—

(A) has chosen not to apply to the Secretary for assistance [regarding the complaint under section 4322(c)] *under section 4322(a)*;

* * * * *

§ 4324. Enforcement of rights with respect to Federal executive agencies

(a)(1) A person who receives from the Secretary a notification pursuant to section 4322(e) [of an unsuccessful effort to resolve a complaint relating to a Federal executive agency] may request that the Secretary refer the complaint for litigation before the Merit Systems Protection Board. The Secretary shall refer the complaint to the Office of Special Counsel established by section 1211 of title 5.

(2)(A) * * *

* * * * *

(b) A person may submit a complaint against a Federal executive agency *or the Office of Personnel Management* under this subchapter directly to the Merit Systems Protection Board if that person—

(1) has chosen not to apply to the Secretary for assistance [regarding a complaint under section 4322(c)] *under section 4322(a)*;

(2) * * *

* * * * *

(c)(1) * * *

(2) If the Board determines that a Federal executive agency *or the Office of Personnel Management* has not complied with the provisions of this chapter relating to the employment or reemployment of a person by the agency, the Board shall enter an order requiring the agency or [employee] *Office* to comply with such provisions and to compensate such person for any loss of wages or benefits suffered by such person by reason of such lack of compliance.

* * * * *

§ 4325. Enforcement of rights with respect to certain Federal agencies

(a) * * *

* * * * *

(d) This section may not be construed—

(1) as prohibiting an employee of an agency referred to in subsection (a) from seeking information from the Secretary regarding assistance in seeking reemployment from the agency under this chapter[, alternative employment in the Federal Government under this chapter,] or information relating to the rights and obligations of [employee] *employees* and Federal agencies under this chapter; or

* * * * *

§ 4326. Conduct of investigation; subpoenas

(a) In carrying out any investigation under this chapter, the Secretary's duly authorized representatives shall, at all reasonable times, *have reasonable access to and the right to interview persons with information relevant to the investigation and shall have reasonable access to, for purposes of examination, and the right to copy and receive, any documents of any person or employer that the Secretary considers relevant to the investigation.*

* * * * *

PART IV—GENERAL ADMINISTRATIVE PROVISIONS

* * * * *

CHAPTER 53—SPECIAL PROVISIONS RELATING TO BENEFITS

Sec.

5301. * * *

* * * * *

5313a. *Limitation on payment of clothing allowance to incarcerated veterans.*

* * * * *

§ 5313A. Limitation on payment of clothing allowance to incarcerated veterans

In the case of a veteran incarcerated in a Federal, State, or local penal institution for a period in excess of sixty days and furnished clothing without charge by the institution, the amount of any clothing allowance payable to the veteran under section 1162 of this title shall be reduced by an amount equal to 1/365th of the amount of the allowance otherwise payable under that section for each day during the 12-month period preceding the date of the payment of the allowance on which the veteran was so incarcerated.

* * * * *

CHAPTER 59—AGENTS AND ATTORNEYS

* * * * *

§ 5902. Recognition of representatives of organizations

(a)(1) * * *

* * * * *

(c)(1) *Unless a claimant specifically indicates in a power of attorney filed with the Department a desire to appoint only a recognized representative of an organization listed in or approved under subsection (a), the Secretary may, for any purpose, treat the power of attorney naming such an organization, a specific office of such an organization, or a recognized representative of such an organization as the claimant's representative as an appointment of the entire organization as the claimant's representative.*

(2) *Whenever the Secretary is required or permitted to notify a claimant's representative, and the claimant has named in a power of attorney an organization listed in or approved under subsection (a), a specific office of such an organization, or a recognized representative of such an organization without specifically indicating a desire to appoint only a recognized representative of the organization, the Secretary shall notify the organization at the address designated by the organization for the purpose of receiving the notification concerned.*

[(c)] (d) Service rendered in connection with any such claim, while not on active duty, by any retired officer, warrant officer, or enlisted member of the Armed Forces recognized under this section shall not be a violation of sections 203, 205, 206, or 207 of title 18.

* * * * *

PART V—BOARDS, ADMINISTRATIONS, AND SERVICES

CHAPTER 71—BOARD OF VETERANS' APPEALS

* * * * *

§ 7104. Jurisdiction of the Board

(a) * * *

* * * * *

[(e) After reaching a decision in a case, the Board shall promptly mail a copy of its written decision to the claimant and the claimant's authorized representative (if any) at the last known address of the claimant and at the last known address of such representative (if any).]

(e)(1) *After reaching a decision on a case, the Board shall promptly mail a copy of its written decision to the claimant at the last known address of the claimant.*

(2) *If the claimant has an authorized representative, the Board shall—*

(A) *mail a copy of its written decision to the authorized representative at the last known address of the authorized representative; or*

(B) send a copy of its written decision to the authorized representative by any means reasonably likely to provide the authorized representative with a copy of the decision within the same time a copy would be expected to reach the authorized representative if sent by first-class mail.

TITLE 42, UNITED STATES CODE

* * * * *

CHAPTER 119—HOMELESS ASSISTANCE

* * * * *

Subchapter VI—Education, Training, and Community Services Programs

* * * * *

PART C—JOB TRAINING FOR HOMELESS

* * * * *

§ 11448. Homeless veterans' reintegration projects

(a) * * *

* * * * *

(e) Authorization of appropriations

(1) There are authorized to be appropriated to carry out this section the following amounts:

(A) * * *

* * * * *

(E) \$10,000 for fiscal year 1997.

(F) \$10,000 for fiscal year 1998.

VETERANS' BENEFITS AND SERVICES ACT OF 1988

* * * * *

TITLE I—HEALTH CARE PROGRAMS

* * * * *

PART B—PILOT PROGRAMS AND REPORTS

* * * * *

SEC. 115. PILOT PROGRAM OF COMMUNITY-BASED RESIDENTIAL CARE FOR HOMELESS CHRONICALLY MENTALLY ILL AND OTHER VETERANS.

(a) * * *

* * * * *

(d) DURATION OF PROGRAM.—The authority for the pilot program authorized by this section expires on [December 31, 1997] *December 31, 1998*.

**UNIFORMED SERVICES EMPLOYMENT AND
REEMPLOYMENT RIGHTS ACT OF 1994**

* * * * *

Subchapter IV—Miscellaneous Provisions

* * * * *

SEC. 8. TRANSITION RULES AND EFFECTIVE DATES.

(a) REEMPLOYMENT.—(1) * * *

* * * * *

(3) In determining the number of years of service that may not be exceeded in an employee-employer relationship with respect to which a person seeks reemployment under chapter 43 of title 38, United States Code, as in effect before or after the date of enactment of this Act, there shall be included all years of service without regard to whether the periods of service occurred before or after such date of enactment unless the period of service is exempted by the chapter 43 that is applicable, as provided in paragraphs (1) and (2), to the reemployment concerned. *Any service begun up to 60 days after the date of enactment of this Act, which is served up to 60 days after the date of enactment of this Act pursuant to orders issued under section 502(f) of title 32, United States Code, shall be considered under chapter 43 of title 38, United States Code, as in effect on the day before such date of enactment. Any service pursuant to orders issued under such section 502(f) served after 60 days after the date of enactment of this Act, regardless of when begun, shall be considered under the amendments made by this Act.*

(4) A person who initiates reemployment under chapter 43 of title 38, United States Code, during or after the 60-day period beginning on the date of enactment of this Act and whose reemployment is made in connection with a period of service in the uniformed services that was initiated before the end of [such period] *such 60-day period* shall be deemed to have satisfied the notification requirement of section 4312(a)(1) of title 38, United States Code, as provided in the amendments made by this Act, if the person complied with any applicable notice requirement under chapter 43, United States Code, as in effect on the day before the date of enactment of this Act.

* * * * *

(b) * * *

(c) INSURANCE.—(1) * * *

(2) With respect to the provisions of section 4317 of title 38, United States Code, as provided in the amendments made by this Act, a [person on active duty] *person serving a period of service in the uniformed services* on the date of enactment of this Act, or a family member or personal representative of such person, may, after the date of enactment of this Act, elect to reinstate or continue a health plan as provided in such section 4317. If such an election is made, the health plan shall remain in effect for the remaining portion of the 18-month period that began on the date of such person's separation from civilian employment or the period of the per-

son's service in the uniformed service, whichever is the period of lesser duration.

